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PAPERS

RELATING TO

①

THE FOREIGN RELATIONS

OF

THE UNITED STATES,

TRANSMITTED TO CONGRESS WITH THE ANNUAL MESSAGE
OF THE PRESIDENT,

② ③

DECEMBER 2, 1872. 2

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PAPERS

RELATING TO

THE TREATY OF WASHINGTON.

VOLUME II.—GENEVA ARBITRATION.

CONTAINING THE REMAINDER OF THE PAPERS ACCOMPANYING THE
COUNTER CASE OF THE UNITED STATES; COUNTER CASE OF HER
BRITANNIC MAJESTY'S GOVERNMENT; INSTRUCTIONS TO THE
AGENT AND COUNSEL OF THE UNITED STATES, AND PROCEEDINGS AT GENEVA IN DECEMBER, 1871, AND APRIL,
1872; CORRESPONDENCE RESPECTING THE GENEVA
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90. Mr. Fish to Gen. Schenck—Cont'd. (Telegram.) June 5, 1872. article as agreed to by the Senate would involve discussion and lead to the defeat of the Treaty 557

91. Gen. Schenck to Mr. Fish .... (Telegram.) June 6, 1872. The British Government do not adopt the fears and suspicions of others with regard to the last clause of the proposed article, but defend it as sufficient. Transmits text of three notes from Earl Granville, first of which relates to alterations in the draught article proposed by the Senate; the second relates to the necessity of presenting the written or printed arguments on the 15th of June; and the third to an application to be made to the Arbitrators to adjourn on the 15th, without the presentation of the argument of either Government, or to conclude a new arrangement with the United States for the enlargement of the time 558

92. Same to same .... June 6, 1872. Informed Earl Granville that it was useless to expect that any change can be made in the article as agreed to by the Senate. Incloses copy of his note to Earl Granville on the subject 559

93. Mr. Fish to Gen. Schenck......... (Telegram.) June 7, 1872. The criticism by the British Government on the language of the Senate amendment is regarded as hypercritical and strained. The Senate and people of the United States impatient over the delays. This Government cannot adopt the argument of Earl Granville with regard to the putting in of arguments by both Governments on the 15th. United States think the Treaty requires it to be done 560

94. Gen. Schenck to Mr. Fish......... (Telegram.) June 7, 1872. Transmits substance of note of even date from Earl Granville respecting the substitution of certain words in the Senate article with regard to indirect losses.... 561

95. Mr. Fish to Gen. Schenck......... (Telegram.) June 8, 1872. Reference to any conversation with Sir E. Thornton unjustified. Have invariably told him that it was useless to discuss the amendments to the proposed article. 561

96. Gen. Schenck to Mr. Fish......... (Telegram.) June 8, 1872. Transmits substance of note from Earl Granville of even date, with sketch of draught note in presenting summary. Earl Granville says that if the Treaty is to be maintained an adjournment from the 15th instant has become absolutely necessary. He proposes that joint application be made to the Tribunal for an adjournment of eight months. If the United States concur in making the application the agent of Her Majesty's Government will deliver to the arbitrators the summary of their argument, accompanied by a declaration that it is the intention of his Government to cancel the appointment of the British Arbitrator, and to withdraw from the Arbitration at the close of the term fixed for the adjournment, unless the difference existing between the two Governments in regard to indirect losses shall have been removed 561

97. Gen. Schenck to Mr. Fish........ June 8, 1872. Transmit copies of correspondence with Earl Granville, (already telegraphed)... 562

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98. Mr. Fish to Gen. Schenck........ (Telegram.) June 9, 1872.	Earl Granville's proposal for joint application to Tribunal for an adjournment for eight months cannot be accepted by this Government. This Government cannot be a party, directly or indirectly, to an agreement whereby Great Britain is to submit her argument to the Tribunal conditionally. Inform Mr. Davis of present condition of negotiation between the two Governments....................	566
99. Mr. Fish to Mr. Davis........... (Telegram.) June 9, 1872.	Instruct Agents and Counsel to be in Geneva on 15th. If necessary, notify Arbitrators that you will be there to deliver argument and proceed according to Treaty. Should such notice as Granville's note indicates be given, a decided protest must be entered against any qualified or conditional appearance before the Tribunal................................	567
100. Mr. Davis to Lord Tenterden..... June 10, 1872.	Incloses copy of letter addressed by him to each of the Arbitrators stating that United States will be represented on 15th instant, pursuant to adjournment and prepared to present argument..........	568
101. Gen. Schenck to Mr. Fish........ (Telegram.) June 11, 1872.	Transmits text of note from Earl Granville to effect that Her Majesty's Government will ask for an adjournment of the Tribunal for such a period as will enable them to make a supplementary convention with the United States............	568
102. Gen. Schenck to Mr. Fish........ (Telegram.) June 11, 1872.	Informing Mr. Fish that he has acknowledged Earl Granville's note, the one above referred to......................	569
103. Gen. Schenck to Mr. Fish........ (Telegram.) June 12, 1872.	Transmits portion of a note from Earl Granville of 11th instant. British Government believe that they have met all the objections which have been advanced by United States. If the United States believe that certain cases are not covered by the last proposed form of article, and will state what the cases are, there is no doubt but that the two Governments can agree upon a form of words which will not be open to the same objection as that of the Senate amendment...............	569
104. Gen. Schenck to Mr. Fish........ June 13, 1872.	Transmits copy of correspondence with Foreign Office, also reports of proceedings in both Houses of Parliament, and articles from leading journals showing anxiety and excitement there occasioned by imminent prospect of the failure of the Arbitration at Geneva. Inclosure 6 referred to in No. 72 is a recapitulation of the negotiations which have passed with respect to the supplementary Treaty article....................................	570
105. Mr. Fish to Gen. Schenck........ (Telegram.) June 13, 1872.	Telegraph Mr. Davis that if arguments are filed in good faith without offensive notice, we will assent to their motion for adjournment................................	575
106. Earl Granville to Lord Tenterden. June 12, 1872.	As to time necessary to consider a supplementary convention in case the Arbitrators inquire how long an adjournment is requested in note which is to be presented..................................	575

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107. Earl Granville to Lord Tenterden. June 12, 1872.	Sir Roundell Palmer having consented to act as Her Majesty's Counsel, must be guided by his advice in all proceedings.	576
108. Earl Granville to Lord Tenterden. June 12, 1872.	If any circumstances should occur not provided for while endeavoring to obtain an adjournment should ask instructions...	576
109. Lord Tenterden to Earl Granville. June 14, 1872.	Reports arrival at Geneva; meeting of Tribunal fixed at 12 o'clock, 15th instant..	575
110. Mr. Davis to Mr. Fish........... (Telegram.) June 15, 1872.	Our argument presented. British Agent instructed to withhold British argument. Tribunal adjourns till Monday.........	577
111. Mr. Fish to Mr. Davis............ (Telegram.) June 18, 1872.	If there is to be an adjournment let it be not beyond 1st of January. The President sees no objection to such adjournment if asked for by the defendants............	577
112. Mr. Davis to Mr. Fish............ (Telegram.) June 19, 1872.	The Tribunal will, this morning, make declaration to the effect that they do not propose to express or imply any opinion upon the points of difference between the two Governments, but it seems to them obvious that the proposed adjournment, instead of settling the questions in dispute, will have a tendency to make the Arbitration abortive; they therefore make the declaration that after a careful perusal of all that has been urged by the United States in favor of indirect claims, they have arrived at the conclusion that these claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation, and should, upon such principle, be wholly excluded from the consideration of the Tribunal.......	577
113. Mr. Davis to Mr. Fish............ June 19, 1872.	Counsel are of opinion that announcement this day made by the Tribunal must be received by the United States as determinative of its judgment upon the question of public law involved. They advise that claims covered by this declaration be withdrawn from further consideration by the Tribunal.....................	578
114. Mr. Fish to Gen. Schenck........ (Telegram.) June 22, 1872.	Telegraph Mr. Davis that the President accepts the declaration of the Tribunal as its judgment upon a question of public law which he felt that the interest of both Governments required should be decided. United States had no desire for a pecuniary award, but desired an expression by the Tribunal as to the liability of a neutral for claims of that character. The President consequently withdraws from the consideration of the Tribunal the three classes of indirect claims before referred to........................	578
115. Mr. Davis to Mr. Fish .... (Telegram.) June 25, 1872.	Counsel concur in form of communication to the Tribunal of the action of our Government	579
116. Gen. Schenck to Mr. Fish........ (Telegram.) June 26, 1872.	Mr. Davis telegraphs General Schenck that he informed the Arbitrators that their declaration with regard to the three classes of indirect claims is accepted by the President. Tribunal then adjourned till the 11th to enable the British Agent to communicate with his Government..	579

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117. Gen. Schenck to Mr. Fish (Telegram.) June 27, 1872. Mr. Davis telegraphs General Schenck that in view of the fact that the United States withdraws her claim for indirect losses, the British Agent will request leave to withdraw the application of his Government for an adjournment 580

118. Mr. Davis to Mr. Fish (Telegram.) June 27, 1872. British argument filed. Arbitration goes on 580

119. Earl Granville to Lord Tenterden. July 1, 1872. Her Majesty's approval of his proceedings at Geneva. Valuable assistance rendered by Sir R. Palmer. Conciliatory spirit shown by American colleagues 581

120. Gen. Schenck to Mr. Fish. Aug. 12, 1872. Forwards copies of Queen's speech. Her Majesty made to say that the declaration of the Arbitrators on subject of claims for indirect losses, is entirely consistent with views announced by her at opening of the session. Ground then taken was that United States had put forward certain claims which Her Majesty's Government held not to be within scope of the Treaty 581

121. Mr. Fish to Gen. Schenck. Aug. 31, 1872. Acknowledges above dispatch. In the correspondence which ensued the United States contended in effect that all the claims presented were within the proper jurisdiction of the Tribunal, and that they could be disposed of only on judgment or award of the Arbitrators. The action of the Tribunal looks very much like taking cognizance of them 582

122. Sir E. Thornton to Mr. Fish. Oct. 17, 1872. Her Majesty's acknowledgments for care and attention which Mr. Adams bestowed on important matters with which he was called upon to deal, and high appreciation of his ability and indefatigable industry 584

123. Mr. Fish to Sir E. Thornton. Oct. 22, 1872. Acknowledges above. President gratified with the intelligence of Her Majesty's appreciation of the manner in which Mr. Adams has discharged the high duties intrusted to him 585

124. Gen. Schenck to Mr. Fish. Feb. 7, 1873. Parliamentary proceedings. Mr. Gladstone's statement that the expression of regret by Great Britain contained in the Treaty of Washington was not in the nature of a condition precedent 585

125. Mr. Fish to Gen. Schenck. Feb. 20, 1873. Acknowledges above. Facts will scarce sustain Mr. Gladstone's denial. History of the informal negotiations which preceded the appointment of the Joint High Commission 586

126. Gen. Schenck to Mr. Fish. March 6, 1873. Refers to above and expresses satisfaction that authentic record of facts attending expression of regret by Great Britain contained in the Treaty has been made. His own understanding as to the matter 587

STATEMENT OF SIR STAFFORD NORTHCOTE AT EXETER, IN RELATION TO AN ALLEGED PROMISE OF EXCLUSION OF THE INDIRECT CLAIMS.

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No. 1. A passage from a speech of Sir Stafford Northcote, at Exeter, May 17, 1872, as published in the Pall Mall Gazette of May 18 593
2. Extract from the London Times of May 20, 1872, giving a report of the speech of Sir Stafford Northcote, at Exeter 593
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11. Letter of Sir Stafford Northcote to Earl Derby, June 5, 1872, read in the House of Lords, June 6, taken from the report of the proceedings in the House of Lords, in the London Times of June 7 603

CONTINUATION OF THE PAPERS ACCOMPANYING THE COUNTER CASE OF THE UNITED STATES.

SUPPLEMENTAL MEMORANDA AND DIPLOMATIC CORRESPONDENCE TOUCHING NEUTRALITY LAWS AND THE EXECUTION THEREOF IN COUNTRIES OTHER THAN THE UNITED STATES AND GREAT BRITAIN.

[199] *1.—FRANCE.

No. 1. Extracts from the Code Pénal of France, with commentaries.
No. 2. The Arman contracts.
No. 3. Case of the Rappahannock.

No. 1.—THE CODE PÉNAL AND COMMENTARIES.

A.—C. P. ART. 84. Quiconque aura, par des actions hostiles non-approuvées par le gouvernement, exposé l'état à une déclaration de guerre, sera puni du bannissement; et, si la guerre s'en est suivie, de la déportation.

ERRATUM.

At page 587, line 7, instead of "to, and," read * * *

tion.

ART. 85. Whoever shall have exposed the French to reprisals by acts not approved by the government shall be punished by banishment.

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[200] *B.

DALLOZ, *jurisprudence générale*, tome XIV, p. 531.

SECT. 5. *Actes qui peuvent exposer l'état à une déclaration de guerre et les citoyens à des représailles.*

67. Ici il ne s'agit plus de trahison; il s'agit de simples faits qui révèlent moins la perversité ou l'immoralité de leur auteur que son imprudence, sa témérité ou sa légèreté. Ce sont des actes qui, dans les circonstances où ils sont intervenus, peuvent exposer l'état à une déclaration de guerre ou les citoyens à des représailles. Ils font l'objet de deux articles: "Quiconque," dit l'art. 84, c. pén., "aura, par des actions hostiles non-approuvées par le gouvernement, exposé l'état à une déclaration de guerre, sera puni du bannissement; et, si la guerre s'en est suivie, de la déportation." Ne comprenant pas comment le fait d'un simple particulier pourrait avoir assez de gravité pour exposer l'état à une déclaration de guerre, Carnot a pensé que cet article ne pourrait s'appliquer qu'à des agents du gouvernement. "Il n'y a," dit-il, "que les agents du gouvernement dont les actions hostiles puissent produire l'effet d'allumer la guerre entre la France et les nations étran-

[201] gères; ce qui résulte, d'ailleurs, *implicitement des dispositions de l'art. 85, qui s'occupe d'une manière spéciale des simples particuliers." Le même auteur invoque à l'appui de son opinion les termes de l'art. 2 du code de 1791, 2ᵉ part., sect. 1, dont la disposition était, en effet, conçue dans ce sens. Mais aujourd'hui, il n'en peut être ainsi; et devant la généralité du mot *quiconque*, dont se sert l'art. 84, aucune incertitude ne peut exister sur ce point, (V. le réquis. de M. Dupin dans l'affaire Jauge, No. 28.)

68. Pour constituer le crime prévu par l'art. 84, une première condition est nécessaire, c'est que les actions incriminées soient des actions *hostiles*. Mais que doit-on entendre par ce mot? La loi ne l'a pas dit, et ne pouvait le dire; car ce caractère ne dépend pas moins de la nature des rapports qui existent entre les deux nations que de la nature des circonstances elles-mêmes. Le fait le plus grave, le plus important, passera inaperçu et n'amènera aucun conflit, si la nation au préjudice de laquelle il a eu lieu est liée par des rapports d'intimité avec la France, ou si elle n'est pas en état de soutenir la guerre. Tandis que le fait le plus insignifiant, l'offense la plus légère, amènera une conflagration si cette nation n'attend qu'un prétexte pour éclater. C'est donc
[202] avec sagesse que la loi a refusé *de définir les actes hostiles dont il s'agit, se bornant à incriminer leur résultat, à savoir d'exposer l'état à une déclaration de guerre. Et il a été jugé, par application de cet article, que des emprunts négociés au nom d'un prince en guerre avec une nation alliée ont pu être regardés comme ne constituant pas des actions hostiles de nature à exposer la France à une déclaration de guerre, sans que cette appréciation tombe sous la censure de la cour de cassation, (crim. réq., 28 nov. 1834, aff. Jauge, No. 28.)

69. Une seconde condition constitutive du crime est que les actes n'aient pas été approuvés par le gouvernement. Remarquons que la loi ne dit pas autoriser, parce que l'autorisation, étant antérieure au fait, le rend légitime et licite sans que, dans aucun cas, il puisse donner lieu à des poursuites; tandis que l'approbation, étant postérieure, ne change pas le caractère du fait, mais en assure seulement l'impunité. Si le gouvernement approuve les actes hostiles, il se les approprie, il en assume la responsabilité et les conséquences, et il met l'agent à couvert de toutes poursuites.

70. Une troisième condition du crime, c'est que les actions hostiles aient exposé l'état à une *déclaration de guerre*. Remarquons que
[203] la loi ne dit pas à des *hostilités*, mais à une déclaration * de guerre, (V. crim. réq., 28 novembre 1834, aff. Jauge, No. 28.) MM. Chauveau et Hélié, t. 2, p. 61, pensent que le code aurait mieux fait de n'exiger que des actes hostiles. "Car," disent-ils, "les agressions qui se manifestent le plus souvent, soit sur les frontières entre les habitants riverains, soit en mer sur des navires isolés, peuvent provoquer des actes de la même nature, mais non une déclaration de guerre. Dans l'état politique de l'Europe, il est difficile que le fait isolé d'un simple citoyen, et même d'un fonctionnaire public, puisse allumer la guerre entre deux nations. Une déclaration de guerre n'intervient pas sans que l'état offensé ait demandé des explications; et dès que l'agression a été commise à l'insu du gouvernement auquel appartient l'agent, dès que le gouvernement la désavoue hautement, il est improbable que la guerre puisse jamais en être la conséquence." Mais ne peut-il pas arriver que le gouvernement offensé ne veuille pas se contenter de ce désaveu; qu'exagérant l'offense, il exagère aussi ses prétentions; qu'il exige une réparation humiliante pour la France, et des satisfactions auxquelles celle-ci ne puisse souscrire?

71. La commission du corps législatif avait proposé (séance du 9 janvier 1810) de prononcer la peine de mort au lieu de celle de la [204] déportation pour le *cas où les actes hostiles auraient été suivis de la guerre, la peine de la déportation n'étant plus suffisante lorsqu'un pareil fléau a suivi le crime. Le conseil d'état repoussa cette proposition par le motif que l'art. 84 suppose que l'agent n'a pas calculé les conséquences de sa conduite, et que, s'il en était autrement, s'il y avait eu des intelligences et manœuvres, le fait tomberait sous l'application des articles précédents. Cette réponse est-elle exacte d'une manière absolue? MM. Chauveau et Hélié, t. 2, p. 64, ne le pensent pas. "Sans doute," disent-ils, "si les actions hostiles étaient le fruit d'intelligences entretenues avec les puissances étrangères, les art. 76 pourraient être, suivant les cas, applicables; mais si ces actions, quoique commises avec préméditation, n'avaient été concertées avec aucun agent étranger, précédées d'aucun acte préparatoire de la trahison, elles ne rentreraient dans aucune autre disposition de la même section."

72. Lors de la révision du code, il fut, au contraire, proposé à la chambre des députés, par un de ses membres, de substituer la détention temporaire à la déportation. L'auteur justifiait cette proposition sur le motif que ce crime, si toutefois il est possible, est inspiré, du moins dans la plupart des circonstances, par des sentiments de bravoure, de [205] générosite même, irréfléchis *sans doute, mais qui ne présentent pas dans la culpabilité ce caractère de gravité signalé dans l'art. 82. "La chambre ne croit pas devoir adopter cet amendement, sur l'observation du rapporteur de la loi, que, si on juge ce fait par l'intention, il n'est pas d'intention plus coupable que celle qui, ne tenant aucun compte des plus graves intérêts de la France, l'expose aux chances et aux malheurs de la guerre." Par suite, la peine de la déportation fut maintenue.

Au surplus, il importe de remarquer que ce ne sont pas les actes hostiles, les violences ou les déprédations que la loi punit, mais seulement le fait d'avoir, par ces actes, exposé l'état à une déclaration de guerre, V. crim. req., 18 juin 1824, aff. Herpin, vo. compèt. crim., No. 112.)

73. L'art. 85 porte: "Quiconque aura, par des actes non-approuvés par le gouvernement, exposé des Français à éprouver des représailles, sera puni du bannissement. Remarquons, d'abord, que la loi ne dit pas quiconque aura *attiré* des représailles, mais quiconque aura exposé: d'où il suit qu'il importe peu, pour l'incrimination, que les représailles n'aient pas eu lieu; qu'il suffit que des Français aient été exposés à en éprouver. Quelle doit être la nature des actes dont parle cet [206] article capables d'exposer les Fran*çais à des représailles? Cela ne peut s'entendre que *d'outrages et voies de fait* commis envers des sujets d'une nation étrangère, et non de simples *injures*, ainsi que le portait, d'ailleurs, le projet primitif, (Conf. MM. Carnot sur le dit article, Chauveau et Hélié, t. 2, p. 61.)

74. Est-il nécessaire que les représailles aient été *commandées par le gouvernement* étranger? MM. Chauveau et Hélié, t. 2, p. 62, se prononcent pour l'affirmative. Il nous semble impossible d'admettre cette restriction. Quand la loi se borne à dire: Quiconqe aura . . . exposé des Français *à éprouver* des représailles sera puni . . . etc., il n'est évidemment pas permis de l'interpréter comme si elle disait: Quiconque aura . . . provoqué contre des Français des représailles de la part *d'un gouvernement étranger*, etc. Ainsi donc, nous pensons que si, par exemple, des Anglais avaient reçu de la part de Français, des outrages de telle nature qu'ils pussent provoquer des représailles contre les Français qui se trouvent en Angleterre, les auteurs de ces outrages

devraient être punis, conformément à l'art. 85, sans qu'il fût nécessaire que les représailles eussent été commandées par le gouvernement anglais. Tel est aussi l'avis de M. Hans. Et il a été jugé, à cet
[207] égard, que les *violences* exercées par des Français envers *un poste
de la douane étrangère à l'effet d'enlever des objets introduits par contrebande sur le territorie étranger, et saisis par les préposés à la douane, constituent des actions hostiles, dans le sens de l'art. 84, c. pén., ou tout au moins des actes qui exposeraient des Français à éprouver des représailles dans le sens de l'art. 85 du même code, (Grenoble, 25 avril 1831.)

(Min., pub., c. Cayen, etc.) LA COUR:—Attendu qu'il résulte de la procédure que, le 25 février 1831, à onze heures du soir, un attroupement de quarante à cinquante personnes, habitant sur le territoire français, s'est porté sur le territoire sarde, où il a attaqué le poste de la douane sarde et s'est livré à divers actes de violence envers les préposés; que le poste a été envahi et le corps-de-garde désarmé; qu'un coup de carabine a été tiré sur l'un des préposés; que les autres armes ont été retenues et déchargées; que les portes d'une remise et d'une écurie ont été brisées, à l'effet d'enlever un tonneau de vin, qui avait été introduit, par contrebande, sur le territoire sarde, ainsi qu'un char et des vaches qui avaient servi de moyens de transport, lesquels objets avaient été saisis par les préposés de la douane, et que ces objets, ainsi violemment
[208] enlevés, ont été ramenés à la *frontière; que Joseph Cayen, Pierre
Malenjon et Antoine Magnin sont suffisamment prévenus d'avoir fait partie de cet attroupement, d'en avoir été les chefs et d'avoir, d'une manière active, participé à l'attaque du post de la douane sarde et aux actes de violence ci-dessus énoncés; que ces faits constituent des actions hostiles non-approuvées par le gouvernement, lesquelles exposaient l'état à une déclaration de guerre, ou tout au moins des actes non-approuvés par le gouvernement, lesquels exposaient des Français à éprouver des représailles, crimes prévus par les art. 84 et 85, c. pén., et emportant peine afflictive et infamante;—attendu qu'il résulte de la dite procédure qu'Antoine Perret est suffisamment prévenu d'avoir, par dons, promesses, machinations ou artifices coupables, provoqué les auteurs des crimes ci-dessus énoncés à les commettre, ou donné des instructions pour les commettre;—attendu que le fait est qualifié crime par la loi; qu'il est prévu par les art. 59 et 60, c. pén., et qu'il importe peine afflictive et infamante;—attendu qu'aux termes de l'art. 5, c. inst. crim., tout Français qui s'est rendu coupable, hors du territoire de France, d'un crime attentatoire à la sûreté de l'état, peut être poursuivi, jugé et puni en France, d'après les dispositions des lois françaises:—par ces motifs, déclare qu'il y a lieu à accusation contre Antoine Perret, Joseph Cayen, etc.

Du 25 avril 1831, c. de Grenoble, ch. réun. MM. Vignes, pr. Moyne, pr.-gén.

[209] *B.

[Translation.]

DALLOZ, *General Jurisprudence*, vol. XIV, p. 531.

SECTION 5.—*Acts which may expose a state to a declaration of war, and its citizens to reprisals.*

67. Here it is no longer a question of treason; it is a question of simple acts which tend less to show the perversity or immorality of the performer than his imprudence, his temerity, or his foolishness. They are

acts which, according to the circumstances under which they happen, might expose the state to a declaration of war, or the citizens to reprisals. They are the subject of two articles. "Whoever," says article 84, penal code, "shall have exposed the state to a declaration of war by hostile acts not approved by the government, shall be punished by banishment; and, if war should follow, by deportation." Not understanding how the act of a private individual could be of enough importance to expose the state to a declaration of war, Carnot was of the opinion that this article could only apply to government agents. He says: "The acts of government agents alone can bring about a war between France and foreign nations; we see this also explicitly set forth in article 85, which treats particularly of private individuals." The same author refers in support of his opinion to the terms of article 2 of the code of [210] 1791, part *2, section 1, which is indeed to this effect; but at the present time this is not the fact, and, in face of the generalty of the word *whoever*, used in article 84, no uncertainty can possibly exist on this point. (V. the "réquisitoire" de M. Dupin, in the Jauge case.)

68. A first condition is necessary to constitute the crime provided for in article 84; it is that the imputed actions should be hostile. What is then to be understood by this word? The law does not answer this question, nor could it do so, for the definition depends no less upon the nature of the relations existing between the two nations than upon the circumstances under which the act is committed. The gravest and most important act would pass unnoticed and would not lead to a conflict, if the nation to whose prejudice it had been done should be bound by ties of friendship to France, or should not be in condition to carry on war, while on the other hand the most insignificant act, the smallest offense, would lead to an outbreak, if this nation should be only waiting for a pretext to commence operations. It was, therefore, wise to refuse to define hostile acts which might expose the state to a declaration of war in the law, and to confine it simply to an exposition of their result. And in accordance with this article, it has been decided that the negotiation of loans in the name of a prince at war with an ally may not be regarded as constituting a hostile action of a nature to expose France to a [211] declaration of war, unless this action falls under the *censure of the court of cassation.—(Crim. rej. 28 Nov., 1834—Jauge case, No. 28.)

69. A second condition constituting the crime is that the acts shall not have been approved by the government. Observe that the law does not say authorized, for the authorization, having been previous to the act, renders it legitimate and lawful, and no prosecution is ever possible; while, on the other hand, approbation is posterior to the act, and does not change its character, but only insures immunity from its consequences. If government approves hostile acts, it appropriates them, it assumes the responsibility and consequences of them, and protects the agent from all prosecution.

70. A third condition to the crime is that the hostile acts should have exposed the state to a declaration of war. Observe the law does not say to hostilities, but to a declaration of war, (V. Crim. rej., 28 Nov., 1834, Jauge case, No. 28; MM. Chauveau & Hléié, vol. 2, p. 61.) Think that it would have been better if the code had demanded hostile acts simple, "for," they say, "the aggressions which are most often manifested, either on the frontiers between the border inhabitants, or on the sea on isolated islands, may lead to acts of the same nature, but not a declaration of war." In the present state of Europe, the isolated act of a citizen, or even of a government functionary, would not be

likely to lead to a war. A declaration of war does not take place until the injured state has asked explanations, and if the government [212] *to which the aggressor belongs has had no connivance in the act, then, as soon as this government disavows it, it is improbable that a war can follow." But may it not happen that the offended government is not contented with this disavowal; that, exaggerating the offense, it also exaggerates its demands; that it requires reparation humiliating to France, and satisfaction to which the latter cannot agree?

71. The commission of the Corps Législatif proposed (meeting of the 9th of January, 1810) to declare the punishment to be death instead of deportation in case the hostile acts should lead to war, the punishment of deportation not being sufficient when such a blow has followed the crime. The Conseil d'État rejected this motion because article 84 supposes that the agent has not calculated the result of his actions; and even if it were otherwise, if there had been trickery or an understanding, the act would fall under the preceding articles. Is this answer absolutely correct? MM. Chauveau & Hélié (v. 2, p. 64) do not think so. "Without doubt," they say, "if the hostile actions were the result of an understanding with foreign powers, article 76 could be applied in accordance with the case; but if the acts had been concerted with no foreign power, had been preceded by no act preparatory to treason, although they were premeditated, they would come under no part of the same section."

72. On the other hand, at the time of the revision of the code, it was proposed by a member in the Chamber of Deputies to substitute [213] temporary detention for deportation. The author *supported his proposition by saying that in almost all cases, whenever this crime is possible, the criminal is actuated by a feeling of courage, even of generosity, thoughtless, undoubtedly, but presenting none of that depth of guilt assigned to it in article 82. "The chamber did not feel at liberty to adopt this amendment," according to the note of the law reporter, "for if one is to judge of the act by the intention, there is no intention more culpable than that which, not taking into account the grave interests of France, exposes it to the chances and misfortunes of war;" consequently the punishment of deportation was retained.

Besides, it must be observed that it is not the hostile act, violence, or depredation that the law punishes, but only the fact of having by these acts exposed the state to a declaration of war.—(V. crim. rej. 18th June, 1824; Herpin case, vo. comp. crim., No. 112.)

73. Article 85 reads: "Whoever shall have exposed the French to reprisals, by acts not approved by government, shall be punished by banishment." Observe, the law does not say whoever shall have *caused* reprisals, but whoever shall have exposed Frenchmen to them, whence it follows that for the charge it is of little account whether or not reprisals have taken place; it is sufficient that French inhabitants have been exposed to the danger of them. What should be the nature of the acts spoken of in this article, capable to expose the inhabitants of France to the danger of reprisals? We can only understand them to be of the nature of outrages and acts of violence committed on the subjects [214] of a foreign nation, and not of simple *losses, as the original draught had it.—(Conf. MM. Carnot on the said art.; Chauveau and Hélié, v. 2, p. 61.)

74. Is it necessary that the reprisals shall have been ordered by the foreign government? MM. Chauveau and Hélié, vol. 2, p. 62, pronounce in the affirmative. It appears to us impossible to admit this

restriction when the law confines itself to saying: "Whoever shall have exposed Frenchmen to reprisals * * shall be punished," * * &c.; evidently this cannot be interpreted as if it read: Whoever shall have provoked reprisals by a foreign government against Frenchmen, &c. Thus we are of opinion that if, for example, certain Englishmen had suffered outrages from certain Frenchmen, of such a nature that they might provoke reprisals against Frenchmen in England, these outrages should be punished, in conformity to article 85, without it being necessary that the reprisals should have been ordered by the English government. Such is also the opinion of M. Hans; and it has been decided in this connection that violence exercised by Frenchmen toward the agents of the customs of a foreign government, the result of which was the removal of certain articles smuggled into the foreign territory, and seized by the officers, constituted hostile acts in the sense of article 84, penal code, or at least acts which would expose the French reprisals in the sense of article 85 of the same code, (Grenoble, 25th April, 1831;
[215] Min. Public, c. Cayen, &c.) The court: Whereas from the case *we conclude, that on the 25th of February, 1831, at 11 o'clock in the evening, a mob of forty or fifty persons, inhabitants of French territory, went into Sardinian territory, where they attacked the post of the Sardinian customs, and committed various acts of violence on the officers; that the post was invaded and the corps-de-garde disarmed; that a carbine was fired at one of the overseers; that the other arms were retained and discharged; that the doors of a coach-house and stable were broken in, in order to carry off a tun of wine which had been smuggled into Sardinian territory, as well as a cart and some cows which had served as the means of transport, which objects had been seized by the inspectors of the customs; and that these objects, thus violently carried off, were brought back to the frontier; that Joseph Cayen, Pierre Morlenjon, and Antoine Maguin are sufficiently convicted of having taken part with this mob, of having been its leaders, and of having participated in an active manner in the attack on the Sardinian post of customs and in the other acts of violence as aforesaid; that these acts constitute hostile actions not approved by the government, which exposed the state to reprisals, crimes provided for in articles 84 and 85, penal code, and accompanied by a personal and infamous punishment:

Whereas it results from the said procedure that Antoine Per-
[216] ret is sufficiently convicted of having, by gifts, *promises, machinations of criminal artifices, instigated the authors of the aforesaid crimes to commit them, or of having given instructions to commit them; whereas the act is defined by the law as a crime, and is provided for in articles 59 and 60, penal code, and is accompanied by a personal and infamous punishment; whereas, according to the terms of article 5, C. Inst. Crim., every Frenchman guilty outside of the territory of France of a crime endangering the security of the state, can be proceeded against, convicted, and punished in France according to the laws of France: Therefore it is declared that there is ground of accusation against Antoine Perret, Joseph Cayen, &c.—(25th April, 1831, C. of Grenoble, Ch. réun. MM. Vignes, pr. Moyne, pr.-gén.

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[217] *C.

Théorie du code pénal d'Adolphe Chauveau et Faustin Hélié, troisième édition, tome 2e, pages 58 et seq., articles 84 et 85.

Il ne s'agit plus d'un crime de trahison: la loi ne soupçonne même aucune intelligence entre l'agent qu'elle inculpe et les ennemis de l'état;

ce qu'elle punit, ce sont des actes imprudents et téméraires, qui peuvent attirer sur les citoyens des représailles; sur l'état la guerre, avec ses chances et ses malheurs. "Si on n'avait pas mis dans le code," a dit un illustre magistrat (M. Dupin, réquisitoire dans l'affaire Jauge), "des peines contre l'homme qui expose son pays à la guerre, si le crime était impuni, il n'y aurait aucune satisfaction légale à donner à l'étranger qui se plaint: la guerre serait le seul remède; ou, bien, on ferait comme chez les peuples anciens, on attacherait cet homme les mains derrière le dos avec une corde, on lui ferait franchir la frontière, et on le livrerait à l'étranger, pour qu'il puisse en faire justice. Il y aurait inhumanité; il faut que le pays ait ses lois, qu'il y ait des juges français pour juger et punir les coupables, afin qu'elle offre aux étrangers une juste satisfac-
[218] tion. La loi française*a conservé la dignité nationale en mettant
parmi les crimes les faits de cette nature, et en réservant le jugement à des juges français. Quelle que soit cette décision, elle devra être respectée; alors, si on fait la guerre, elle sera juste."

Rappelons le texte des deux articles:

ARTICLE 84. . . . .

ARTICLE 85. . . . .

Il est évident que ces deux dispositions prévoient le même fait, mais en le supposant dans des espèces diverses et en lui imprimant un caractère différent. Nous allons successivement examiner ces deux hypothèses.

M. Carnot paraît penser que l'article 84 ne s'applique qu'aux agents du gouvernement, et il se fonde sur ce qu'il n'y a que les agents qui, par des agressions hostiles ou des infractions aux traités, puissent exposer l'état à une déclaration de guerre. Le code pénal de 1791 portait, en effet, dans l'article 2 de la section 1ère de la 2ème partie: "Que, lorsqu'il a été commis quelques agressions hostiles ou infractions de traites, tendantes à allumer la guerre entre la France et une nation
[219] étrangère . . . . le*ministre qui aurait donné ou contre-signé
l'ordre, ou le commandant des forces nationales, de terre ou de mer, qui, sans ordre, aurait commis les dites agressions hostiles ou infractions de traité, serait puni de mort." Mais si le législateur de 1791 n'avait cru devoir s'occuper que des actes hostiles du fonctionnaire, notre code a effacé cette restriction; l'article, en employant le mot *quiconque*, ne laisse aucun doute sur sa généralité.

La loi n'a point défini les actes hostiles, et peut-être cette définition était-elle impossible. En général les actes de cette nature empruntent toute leur valeur politique des circonstances dans lesquelles ils se produisent. Un fait grave, important, n'entraînera aucune conséquence sérieuse, s'il est commis envers une nation que des liens étroits d'amitié unissent à la France. Dans d'autres circonstances, le fait le plus mimime peut élever un conflit et jeter l'alarme au sein de deux nations. Il faut donc se borner à dire, dans les termes de la loi, que les actions hostiles sont toutes les actes matériels qui, non-approuvés par le gouvernement, ont exposé l'état à une déclaration de guerre.

[220] Ainsi, il ne suffirait pas que les *actes hostiles eussent exposé
à de simples hostilités: la loi exige formellement, pour constituer le crime, le péril et l'alarme d'une déclaration de guerre. Ce point a été solennellement reconnu par la cour de cassation dans l'affaire Jauge. . . .

Et ceci nous donnera lieu de remarquer une sorte de lacune dans la loi. Dans l'état politique de l'Europe, il est difficile que le fait isolé d'un simple citoyen, et même d'un fonctionnaire public, puisse allumer la guerre entre deux nations. Une déclaration de guerre n'intervient pas sans que l'état offensé ait demandé des explications. Et dès que l'agression a été commise à l'insu du gouvernement auquel appartient l'agent, dès que le gouvernement la désavoue hautement, il est improbable que la guerre puisse jamais en être la conséquence. Il suit de là, et c'est aussi ce que confirme l'expérience, que l'art. 84, quoique destiné à réprimer un fait coupable, doit demeurer sans application dans nos lois. Mais il en eût été autrement si le législateur avait modifié l'une des circonstances constitutives de ce crime, s'il s'était borné à exiger que les actes hostiles fussent de nature à exposer l'état, non à une déclaration de guerre, mais à de simples actes [221] hostiles: car les agressions qui se manifestent le plus souvent, *soit sur les frontières entre des habitants riverains, soit en mer sur des navires isolés, peuvent provoquer des actes de la même nature, mais non une déclaration de guerre. On pourrait objecter que le cas où l'agression provoque des actes hostiles envers l'état rentre dans les termes de l'art. 85. Ce serait une erreur: cet article ne punit que les actes qui exposent les Français à des représailles; or, cette expression, opposée aux actes qui exposent *l'état* à la guerre dans l'art. 84, indique clairement que le premier de ces articles n'a prévu que les représailles exercées contre les particuliers, et nous verrons tout à l'heure que tel est aussi le sens de cette disposition. Reste, donc, l'hypothèse où l'agression a attiré des hostilités, mais non la guerre envers le pays; et cette hypothèse échappe à l'une et à l'autre de ces deux incriminations.

Que faut-il entendre par des actes qui exposent les Français à des représailles?

M. Carnot pense que le législateur a voulu parler des outrages et voies de fait commis envers des sujets d'une nation étrangère. [L'article 136 du code prussien porte: "Celui qui se permet des outrages contre des sujets d'une puissance étrangère, même hors du royaume, et expose ainsi les sujets prussiens à des représailles de la part du gouvernement étranger, [222] doit être *puni comme s'il eût commis le délit dans l'intérieur.] En effet, puisque ces actes n'exposent que des Français individuellement, et non la société française, à des représailles, il s'ensuit que dans la prévision de la loi ils n'ont dû offenser également que des individus. Cependant, il nous semble nécessaire que les représailles soient commandées par le gouvernement étranger. Ainsi nous ne pourrions admettre avec M. Hans que l'insulte faite à un Anglais à Bruxelles pût motiver l'application de cet article, par cela seul que les Belges qui résident en Angleterre seraient exposés à des représailles, avant même qu'aucune décision de l'autorité étrangère n'eût prononcé de représailles. Ce ne sont là ni les faits ni les représailles que la loi a eus en vue. En général elle a voulu prévenir les voies de fait et les déprédations qui peuvent s'exercer sur les frontières d'un royaume, sur un territoire ami. Sans doute, les espèces peuvent varier à l'infini, mais il faut que les violences soient assez graves pour exposer à des représailles; et ce dernier terme, dans le droit des gens, exige l'intervention d'une autorité étrangère.

Au reste, on ne doit pas perdre de vue, dans l'application de [223] ces deux articles, que ce ne sont pas les actes hostiles, les *violences ou les déprédations que la loi punit, mais seulement le fait d'avoir par ces actes exposé l'état à une déclaration de guerre ou les Français à des représailles. [Arrêt de cassation, 18 juin 1824. (Bourguignon, tome 3, page, 91.)] C'est la paix, ce sont les intérêts nationaux qu'elle a voulu protéger; c'est le préjudice éventuel que les actes peuvent produire qui devient la base de la peine. Ainsi la criminalité ne se puise pas dans la gravité intrinsèque des faits, mais dans leur importance politique, dans les chances de guerre ou de représailles qu'ils ont soulevées; en un mot, dans la perturbation politique qu'ils ont causé.

Ces dispositions ont été rarement appliquées; il importe dès lors de recueillir avec plus de soin les espèces où cette application a eu lieu. Le Sieur Herpin avait capturé un navire sarde pendant qu'il commandait un navire colombien; accusé d'avoir commis un acte hostile qui exposait la France à une déclaration de guerre de la Sardaigne, ou du moins à des représailles, il répondait que ce fait ne rentrait point dans les termes des art. 84 et 85, et que, d'ailleurs, commis en pays étranger, il
n'était pas justiciable des tribunaux de France. La cour de
[224] *cassation a rejeté ces exceptions en se fondant sur ce que toute
la criminalité prévue par ces articles consistait uniquement dans le fait d'avoir exposé l'état à une déclaration de guerre ou les Français à des représailles; que le préjudice éventuel faisait rentrer l'acte incriminé dans la catégorie des faits que lès art. 5, 6, et 7 du code d'instruction criminelle défèrent aux tribunaux français, et que cet acte réunissait, d'ailleurs, les caractères prévus et punis par les art. 84 et 85. De cet arrêt, qui a jugé au fond en point de fait, il résulte cette seule règle, que les crimes prévus par cet article peuvent, lorsqu'ils ont été commis en pays étranger, et qu'ils se trouvent dans les cas prévus par le code d'instruction criminelle, être l'objet d'une poursuite en France.

Dans une seconde espèce qui semble de nature à se renouveler d'avantage, un attroupement de 50 Français s'était porté sur le territoire sarde, et avait exercé des violences envers un poste de la douane étrangère, dans le but d'enlever des objets introduits en contrebande dans la Sardaigne et que les préposés avaient saisis. La chambre d'accusation de la cour royale de Grenoble a reconnu que ces faits constituaient des
actes hostiles non-approuvés par le gouvernement, lesquels ex-
[225] posaient *l'état à une déclaration de guerre; ou tout au moins
des actes non approuvés par le gouvernement, lesquels exposaient des Français à éprouver des représailles. Il est à remarquer que dans cet arrêt, comme dans le précédent, les juges out cru nécessaire d'accumuler la double accusation des deux crimes prévus par les art. 84 et 85. C'est qu'il est évident que la première, circonscrite dans les termes trop restrictifs de l'art. 84, n'a que peu de chances de succès. L'observation que nous avons faite plus haut se trouve donc confirmée par la pratique.—Jurisprudence des codes criminels par M. Bourgnignon, tome 3e, p. 86; Commentaire sur le code pénal, par M. Carnot, seconde édition, tome 1er, pp. 300 et seqs.; Traité théorique et pratique du droit criminel français, par M. Rauter, tome 1er, p. 418, No. 287.

[226] *C.

[Translation.]

Theory of the penal code; by Adolphe Chauveau and Faustin Heine; third edition, second volume, pages 58 *et seq, lit.* 84–5.

The crime of treason is no longer in question. The law does no suppose any understanding to exist between the agent that it arraigns and the enemies of the state; it punishes the imprudent acts and acts of temerity which might make her citizens suffer from reprisals, or bring a war with all its chances and misfortunes upon the state. If, said a famous magistrate, (M. Dupin, réquisitoire in the Jauge case,) they had not ordered in the code punishment for him who exposes his country to war, if the crime were not punishable, there would be no legal satisfaction to the foreign nation which complained. War would be the only

remedy; or we would be obliged to follow the ancients, who tied the man's hands behind his back with a cord, made him cross the frontier, and gave him up to the foreign nation that it might administer justice on his case. This would be unnatural. A country must have its own laws and its own judges to judge and punish guilty persons, in order that it may offer to a foreign state a just satisfaction. French law has preserved the national dignity in putting among crimes acts of this nature, and in reserving judgment on them for French judges.
[227] *Whatever be this decision it should be respected; then, if war follows, it will be a just one. Let us look at the text of the articles:

ART. 84. * * * * * *

ART. 85. * * * * * *

It is evident that the two arrangements provide for the same action, but supposing it divided into different species and imprinting different characters upon it. We will successively examine these two hypotheses.

M. Carnot appeared to think that article 84 applied only to government agents, and he depends upon the statement that only agents of the government can, by hostile aggressions, and infractions of treaties, expose the state to a declaration of war. The penal code of 1791, in fact, reads, article 2, section 1, part 2: "If any hostile aggression or infraction of a treaty has been committed, which tends to cause war between France and a foreign country, * * * the minister who shall have given or countersigned the order, or the commander of the national forces on land or water who, without orders, shall have committed the hostile aggression or infraction of treaty, shall be punished by death." But, although the legislator of 1791 occupied himself only with the hostile acts of public functionaries, our code has effaced this restriction. The article in employing the word *whoever* left no doubt as to its generality. The law has not defined hostile acts, and perhaps a
[228] def*inition was impossible. Generally, acts of this nature get all their political value from the circumstances under which they take place. A grave and important act will have no serious consequence if committed against a nation closely bound in friendship to France. Under other circumstances, the least act might occasion a conflict and throw the nation into a state of alarm. It is necessary, then, to confine oneself to the terms of the law, that hostile actions are all material acts which, not being approved by the government, have exposed the state to a declaration of war.

Thus it would not be enough that the hostile acts should have simply caused an exposure to hostilities; the law formally demands, in order to constitute the crime, the peril and alarm of a declaration of war. This point was solemnly recognized by the court of cassation in the Jauge case.

And this gives us occasion to observe what may be regarded as a deficiency in the law. In the political state of Europe it would be difficult for the isolated act of a simple citizen, or even of a public functionary, to cause a war between two nations. A declaration of war does not take place until the offended State has demanded explanations, and if the act has been committed without connivance of the govern-
[229] ment—connivance to which the agent belongs—*as soon as that government disavows it, it is improbable that war will result. From this it follows, and we are confirmed by experience that article 84, although intended to suppress a culpable act, must remain in our laws without application. But it would have been otherwise if the legislators had modified one of the details constituting the crime; if

they had confined themselves to demanding that the hostile acts should be of a nature not to expose the State to a declaration of war, but to expose it to simple acts of hostility; for the aggressions which are most often made, either on the frontier between the border inhabitants, or in the sea on an isolated island, may provoke acts of the same nature, but not a declaration of war. It might be objected that the case where the aggression provokes hostilities against the State is provided for in the terms of article 85. This would be incorrect; this article punishes only those who expose the French to the danger of reprisals. Then this expression, opposed to the one relative to the acts which expose the State to war in article 84, indicates clearly that the first of these articles only provided for reprisals against private persons, and we shall presently see that this is also the meaning of this provision. The hypothesis now remains where the aggression has drawn on hostilities against the country, but not war; but this hypothesis does [230] not *enter into either of these incriminations.

What do we understand by acts which expose the French to reprisals? Mr. Carnot thinks that the legislature meant outrages and acts of violence committed against the subjects of a foreign nation.[1] In fact, since these acts expose the French individually only to reprisals, and not society at large in France, it therefore follows that in the law provision is made for the offenses of individuals only. Nevertheless, it appears necessary to us that the reprisals should be ordered by the foreign government. Neither can we agree with M. Haus that an insult given to an Englishman in Brussels would be a reason for applying this article, because Belgians residing in London might be exposed to reprisals even before any decision of the foreign authorities had pronounced in favor of reprisals. Here are neither the acts nor the reprisals had in view by the law. In general, it intended to prevent the acts of violence and the depredations against a friendly territory which [231] might take place on the frontiers of the kingdom. Un*doubtedly there may be an infinite variety of such acts of violence; but they must be so aggravated as to cause danger of reprisals, and at last, according to the law of nations, to demand the intervention of a foreign power.

In the application of these two articles we should not lose sight of the fact that it is not the hostile acts, the violence, or the depredations that the law punishes, but only the fact of having, by these acts, exposed the state to the danger of a declaration of war, or the French to reprisals.[2] The law was meant to insure peace and protect the national interests. It is the eventual injury that the actions may produce which forms the foundation of the punishment.

Thus the criminality is not in the intrinsic gravity of the acts, but in their political importance, in the probabilities of war or reprisals to which they have given rise; in a word, in the political agitation which they have occasioned.

The provisions here made have been rarely applied; it is important, however, to collect carefully the cases where an application has been made. One Hoquin (?) captured a Sardinian vessel while in command of a Colombian vessel, accused of having committed a hostile act which exposed France to a declaration of war by Sardinia, or, at least, to re-

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[1] Article 136 of the Prussian code reads: He who commits outrages on subjects of a foreign power, even outside the kingdom, and thus exposes Prussian subjects to reprisals on the part of the foreign government, shall be punished as if he had committed the offense in the interior.

[2] Decree of cassation, 18 June, 1824. (Bourguignon, vol. 3, p. 91.)

prisals; he answered that this act was not included in the terms
[232] of articles 84 *and 85, and that besides being committed in a foreign country, the tribunals of France had not jurisdiction. The court of cassation rejected these exceptions, supporting itself by saying that the criminality provided for in these articles was simply the fact of having exposed the state to a declaration of war, or the French to reprisals; that the eventual injury was what brought the act within the category of articles 5, 6, and 7 of the code of Inst. Crim., referring to French tribunals; and besides, this act recognized the acts provided for and punished by articles 84, 85. From this opinion, which decided fundamentally on point of facts, this rule follows that the crimes provided for in these articles may be prosecuted in France when they have been committed in a foreign country, and come under the provisions of the code of Crim. Inst.

A second case of a kind which appears to be likely to come up again, is as follows: A mob of fifty Frenchmen went upon Sardinian territory, and used violence against the foreign post of customs in order to carry off certain objects smuggled into Sardinia, and which had been seized by the officers. The "Chambred accusation" of the royal court of Grenoble declared that these acts constituted hostile acts not approved by government, which exposed the state to a declaration of war, or, at least, acts not approved by government, which exposed the French to reprisals. And in this opinion we have to observe, as in the
[233] *preceding one, that the judges thought it necessary to use a double accusation of the two crimes provided for in articles 84 and 85. For it is evident that the first accusation has little chance of success, on account of the too restricted wording of article 84. The observation which we made above is thus confirmed by practice.—(See also Jurisprudence of Criminal Codes, by W. Bourguignon, 3 vol., p. 86; Commentary on the Penal Code, by N. Carnot, 2d edition, 1 vol., p. 300 et seq.; Historical Practical Treatise on French Criminal Law, by M. Rauter, 1 vol., p. 418, No. 287.)

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[234] *D.

Dalloz, *Jurisprudence générale*, tome XXXIV, repartir, p. 1680.

Duvergier, *Collection des lois, etc.*, tome 25, 10–11 avril 1825.—Loi pour la sûreté de la navigation et du commerce maritime.

Tit. I.—Du Crime de Piraterie.

Art. I. Seront poursuivis et jugés comme pirates: 1° Tout individu faisant partie de l'équipage d'un navire ou bâtiment de mer quelconque, armé et naviguant sans être ou avoir été muni pour le voyage de passeport, rôle d'équipage, commissions ou autres actes constatant la légitimité de l'expédition; 2° Tout commandant d'un navire ou bâtiment de mer armé et porteur de commissions délivrées par deux ou plusieurs puissances ou états differents.

II. Seront poursuivis et jugés comme pirates: 1° Tout individu faisant partie de l'équipage d'un navire ou bâtiment de mer français, lequel commettrait, à main armée, des actes de déprédation ou de violence, soit envers des navires français ou des navires d'une puissance avec laquelle la France ne serait pas en état de guerre, soit envers les équipages ou chargements de ces navires; 2° Tout individu faisant partie de l'équipage d'un navire ou bâtiment de mer étranger, lequel, hors l'état
[235] de guerre et sans être pourvu de lettres de marque *ou de commissions régulières, commettrait les dits actes envers des navires

français, leurs équipages ou chargements; 3° Le capitaine et les officiers de tout navire ou bâtiment de mer quelconque qui aurait commis des actes d'hostilité sous un pavillon autre que celui de l'état dont il aurait commission.

III. Seront également poursuivis et jugés comme pirates: 1° Tout Français ou naturalisé Français qui, sans l'autorisation du roi, prendrait commission d'une puissance étrangère pour commander un navire ou bâtiment de mer armé en course; 2° Tout Français ou naturalisé Français qui, ayant obtenu, même avec l'autorisation du roi, commission d'une puissance étrangère pour commander un navire ou bâtiment de mer armé, commettrait des actes d'hostilité envers des navires français, leurs équipages ou chargements.

IV. Seront encore poursuivis et jugés comme pirates: 1° Tout individu faisant partie de l'équipage d'un navire ou bâtiment de mer français qui, par fraude ou violence envers le capitaine ou commandant, s'emparerait du dit bâtiment; 2° Tout individu faisant partie de l'équipage d'un navire ou bâtiment de mer français qui le livrerait à des pirates ou à l'ennemi.

[236] *D.

[Translation.]

DALLOZ, *General Jurisprudence*, vol. xxxiv, p. 1680 *et seq.*

DUVERGIER, *Collection of Laws*, &c., vol. 25; 10, 11, April, 1825. Law for the safety of maritime navigation and commerce.

TITLE I.—THE CRIME OF PIRACY.

ART. 1. To be prosecuted and convicted as pirates: 1. Every individual forming part of the crew of any armed ship, or vessel whatever, sailing without passport, manifest, commission, or other papers showing the legality of the voyage. 2. Every commander of armed vessel carrying the commissions of two or more different powers or states.

2. To be prosecuted and convicted as pirates: 1. Every individual forming part of the crew of a French vessel, which has by force committed acts of depredation or violence, either against French vessels or those of a power with which France is not in state of war, or their crews, or cargoes. 2. Every individual belonging to the crew of any foreign vessel that commits the said acts against French vessels, their crews or cargoes, there being no war between the countries at the time, and the vessel not being provided with letters of marque or regular commissions. 3. The captain and officers of any vessel whatever which shall have committed acts of hostility under the flag of a country other than that of the state whose commission it carries.

3. Also to be prosecuted and convicted as pirates: 1. Every Frenchman, or naturalized Frenchman, who, without the authorization [237] of the King, shall take a commission *from a foreign power to command an armed vessel. 2. Every Frenchman, or naturalized Frenchman, who, having obtained a commission from a foreign power to command an armed vessel, even with the authorization of the King, shall commit acts of hostility against French vessels, their crews, or cargoes.

4. Also to be prosecuted and convicted as pirates: 1. Every individual forming part of the crew of a French vessel, that, by fraud or violence toward the captain, shall have obtained possession of the said vessel. 2. Every individual forming part of the crew of a French vessel that shall have given it up to pirates, or the enemy.

[238] *No. 2.—THE ARMAN CONTRACT.

E.

Consultation de M. Berryer.

L'ancien avocat soussigné, vu le mémoire à consulter présenté au nom du gouvernement des États-Unis d'Amérique, ensemble les pièces justificatives qui y sont jointes, délibérant sur les questions qui lui sont soumises, est d'avis des résolutions suivantes:

De l'exposé contenu dans le mémoire à consulter, et des documents qui l'accompagnent, résulte la preuve complète des faits qu'il importe d'abord de résumer.

En 1861, au mois de février, plusieurs états du sud de l'Amérique Septentrionale, régie alors par la *Constitution fédérale des États-Unis*, résolurent de se séparer des États du nord, et se réunirent en un congrès pour constituer le *gouvernement des États-Confédérés d'Amérique*. La guerre entre les confédérés et le gouvernement fédèral éclata dans le mois d'avril.

Au 10 juin, de la même année, parut dans la partie officielle du
[239] *Moniteur* une déclaration *soumise par le ministre des affaires
étrangères à l'Empereur des Français et revêtue de son approbation.

Par cet acte solennel, l'Empereur, prenant en considération l'état de paix qui existe entre la France et les *États-Unis d'Amérique*, résolut de maintenir une stricte neutralité dans la lutte engagée entre le gouvernement de *l'Union* et les états qui prétendent former une confédération particulière, déclare, entre autres dispositions:

> . . . . . . 3°. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux de guerre . . . ou de concourir, d'une manière quelconque, à l'équipement ou l'armement d'un navire de guerre ou corsaire de l'une des parties.
>
> . . . . . . 5°. Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties et contraire à la neutralité que nous avons résolu d'adopter.

La déclaration impériale se termine en ces termes:

> [240] Les contrevenants aux défenses et recomman*dations contenues dans la présente
> déclaration seront poursuivis, s'il y a lieu, conformément aux dispositions de la loi du 10 avril 1825, et aux articles 84 et 85 du Code pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire aux dits contrevenants des dispositions de l'article 21 du Code Napoléon et des articles 65 et suivants du décret du 24 mars 1852 sur la marine marchande, 313 et suivants du Code pénal pour l'armée de mer.

Malgré cette déclaration publique de la neutralité de la France, malgré les prohibitions formelles qu'elle prononce conformément aux règles du droit des gens et aux dispositions spéciales des lois françaises, une convention a été conclue le 15 avril 1863, entre M. Lucien Arman, constructeur maritime à Bordeaux, et le capitaine James Dunwoody Bullock, Américain, agent du gouvernement des états-confédérés du sud, stipulant dans cet acte *d'ordre et pour compte des mandats* qu'il ne fait pas connaître, et dont, est-il dit, *il a produit les pouvoirs en règle*. Pour l'exécution du traité, M. Bullock élit domicile chez M. Erlanger, banquier, à Paris.

Par ce traité, M. Arman "s'engage à construire quatre bateaux à vapeur de quatre cent chevaux de force et disposés à recevoir un armement de dix à douze canons."

[241] *Il est stipulé que M. Arman construira dans ses chantiers à
Bordeaux deux de ces navires, et *confiera à M. Voruz l'exécution des deux autres navires, qui seront construits simultanément dans les chantiers de Nantes.*

Pour déguiser la destination de ces quatre navires, il est écrit dans l'acte qu'ils doivent être consacrés à "établir une communication régulière entre Shang-haï, Yédo, et San Francisco, passant par le détroit de Van Diémen, et aussi qu'ils doivent être propres, si le cas se présente, à être vendus, soit à l'empire chinois, soit à l'empire du Japon."

Enfin M. Bullock s'engage à faire connaître aux constructeurs la maison de banque qui sera chargée d'effectuer à Paris le paiement du prix de chacun de ces navires, fixé à la somme de 1,800,000 francs.

Le 1^er juin suivant, M. Arman, pour se conformer à l'ordonnance royale du 12 juillet 1847, adressa à M. le ministre de la marine la demande d'une autorisation de munir d'un armement de douze à quatorze canons, de 30, quatre navires à vapeur en bois et fer, en construction, *deux dans ses chantiers à Bordeaux, un chez MM. Jollet et Babin à Nantes, un chez M. Dubigeon à Nantes.*

"Ces navires," est-il dit dans la lettre adressée au ministre, "sont destinés, *par un armateur étranger*, à faire le service des mers de Chine [242] et du Pacifique entre *la Chine, le Japon, et San Francisco. Leur armement spécial a en outre pour but d'en permettre eventuellement la vente aux gouvernements de Chine et du Japon.

"Les canons seront exécutés par les soins de M. Voruz aîné, de Nantes."

La lettre de M. Arman se termine en ces mots:

> . . . . Les constructions étant déjà entreprises depuis le 15 avril dernier, je prie votre excellence de vouloir bien accorder le plus tôt possible à M. Voruz l'autorisation que je sollicite et que prescrit l'ordonnance royale du 12 juillet 1847.

Sur cet exposé, et pour la destination supposée des quatre navires, l'autorisation fut accordée par M. le ministre de la marine dès le 6 juin, ainsi qu'elle était demandée par M. Arman.

Le même jour, 6 juin 1863, M. Slidell, autre agent du gouvernement des états-confédérés, adressait à M. Arman la lettre suivante:

> En conséquence de l'autorisation ministérielle que vous m'avez montrée, et que je juge suffisante, le traité du 15 avril devient obligatoire.

Trois jours après, le 9 juin, M. Erlanger, banquier à Paris, chez qui M. Bullock avait pris domicile dans le traité du 15 avril, et qui devai garantir les paiements aux constructeurs, écrivait à M. Arman :

> [243] *Je m'engage à vous garantir les deux premiers paiements des navires que vous construisez pour les confédérés, moyennant une commission, etc.

Les conditions financières proposées par M. Erlanger furent acceptées par M. Arman, qui, le même jour, le 9 juin, adressa à M. Voruz, à Nantes, le télégramme suivant:

> À M. Voruz, *Grand Hôtel, Paris :*
>
> J'ai signé, sans modification, la lettre à Erlanger ; elle est au courrier.
>
> ARMAN.

De son côté, M. Erlanger écrivait, sous la même date, à Mr. Voruz, à Nantes:

> Voici les lettres d'engagements, le contrat et la copie. Comme vous habitez *sous le même toit que le capitaine Bullock,* vous aurez peut-être l'obligeance de lui faire signer la copie du contrat. J'ai écrit directement à M. Arman. Recevez, etc.

Le lendemain, 10 juin, M. Arman adressait à M. Voruz une lettre ains conçue :

> Cher Monsieur Voruz : Je vous accuse réception de votre lettre chargée du 9, et d mandat de Bullock de 720,000 fr., qui était inclus. Je m'empresse de vous donner décharge, ainsi que vous le désirez, des pièces que vous avez signées aux mains de M Bullock pour *le premier paiement des deux navires de* 400 *chevaux, que je construi* [244] *pour le compte des confédérés* *simultanément avec ceux que vous faites construir par MM. Jollet et Babin, et Dubigeon. . . . . .
>
> Je vous prie de faire en sorte d'obtenir de M. Bullock la promesse de nous rembour

ser enfin de compte des escomptes de garantie que nous payons à M. Erlanger. Recevez, etc.

D'autre part, MM. Jollet et Babin, et Dubigeon fils, chargés de la construction, dans leurs chantiers à Nantes, de deux des quatre navires, ainsi qu'il est dit dans la lettre adressée le 1^er^ juin par Mr. Arman à M. le ministre de la marine, écrivaient, le 10 du même mois, à M. Voruz :

> MON CHER VORUZ : Après avoir pris connaissance des conditions financières qui vous ont été faites par la maison Erlanger, ainsi que des lettres intervenues entre vous et MM. Slidell et Bullock, nous venons vous rappeler nos conventions verbales, afin de bien préciser nos positions respectives dans cette affaire.

D'autres personnes, avec entière connaissance de la véritable destination de ces constructions et de ces armements maritimes, devaient prendre une part notable dans les bénéfices de l'opération et supporter proportionellement les escomptes de garantie stipulés en faveur de M. Erlanger. C'est pour s'entendre sur ce dernier objet que M. Henri
[245] Arnous Rivière, négociant à Nantes, écrivait dès *le 8 juin à M.
Voruz aîné :

> La complication financière survenue aujourd'hui dans l'affaire dont le contrat a été signé le 15 avril dernier entre M. Arman, vous et le capitaine Bullock, motive la proposition que je viens vous soumettre.

MM. Mazeline et C^ie^, du Havre, étaient chargées de la confection des machines à vapeur pour les quatre navires à hélice, dont les coques se construisaient dans les chantiers de Bordeaux et de Nantes. Mais ignoraient-ils la véritable destination de ces bâtiments de guerre lorsqu'ils écrivaient à M. Voruz aîné, le 23 juin 1863 ?

> MONSIEUR : *En paraphant*, il y a quelques jours, *le marché Bullock*, etc., nous avons omis, vous et nous, de redresser une erreur de dimension des machines, etc. Nous vous prions de nous écrire que ces dernières mesures, *qui sont en construction*, sont bien celles convenues entre nous.

Tout était donc parfaitement concerté entre les divers participants pour l'exécution du traité passé le 15 avril 1863 entre M. Arman, constructeur français, et M. le capitaine Bullock. Ce traité a été expressément ratifié par M. Slidell, agent diplomatique des états-confédérés, suivant sa lettre adressée à M. Arman le 6 juin 1863.

Les autorisations ministérielles exigées par la loi française pour
[246] la construction et l'armement *des bâtiments de guerre ont été ac-
cordées, l'administration ayant sans doute été abusée par la prétendue destination qu'un *armateur étranger* devait donner à ces navires de guerre dans les mers de Chine et du Pacifique, et par la condition éventuelle de les vendre aux gouvernments de Chine ou du Japon. Mais leur destination véritable pour le service des états belligérants du sud est parfaitement connue de tous les intéressés. Les constructions des vaisseaux, de leurs machines, de leurs armements, sont en pleine activité. Les paiements, garantis aux constructeurs par une maison de banque puissante, sont en partie effectués.

Une seconde opération doit avoir lieu. Le 14 juillet 1863, M. Voruz aîné, écrivant de Paris à son fils, M. Anthony, lui annonce que le capitaine Bullock et M. Arman sont partis la veille pour Bordeaux, ainsi que M. Erlanger, banquier, et qu'il s'agit d'un traité pour des *navires blindés*. En même temps il lui dit qu'une affaire est faite avec un sieur Blakeley, fondeur anglais, pour la fourniture de 48 pièces de canon avec 200 boulets par pièce. "Le marché," dit-il, "est fait d'une manière qui nous assure la fourniture exclusive de tout ce qui *pourra être exécuté* en France."

Le 15 juillet, le même M. Voruz, en rappelant à M. le ministre
[247] de la marine que, par *sa lettre en date du 6 juin, il a bien voulu

l'autoriser à exécuter, dans ses usines à Nantes, les canons nécessaires à l'armement de quatre navires, *dont deux sont en construction à Bordeaux, dans les chantiers de M. Arman, et deux dans les chantiers de Nantes*, demande au ministre "la permission de visiter l'établissement du gouvernement à Ruelle, pour avoir les améliorations effectuées dans l'outillage," etc. Cette permission fut accordée le 9 août.

Une nouvelle convention est signée double à Bordeaux le 16 juillet 1863:

Entre M. Arman, constructeur maritime à Bordeaux, député au Corps législatif, quai de la Monnaie, 6, et M. James Dunwoody Bullock, agissant d'ordre et pour compte de mandants dont il a produit les pouvoirs en règle, élisant domicile chez M. M. Émile Erlanger, rue de la Chaussée d'Antin, 21, à Paris, ont été arrêtés les conventions suivantes:

ART. 1er. M. Arman s'engage envers M. Bullock, qui l'accepte, à construire pour son compte, dans ses chantiers de Bordeaux, deux bâtiments hélices à vapeur, à coque bois et fer, de 300 chevaux de force, à deux hélices, avec deux *blockhaus blindés*, conformes au plan accepté par M. Bullock.

* * * * * * *

[248] *ART. 3. Resteront seuls à la charge de M. Bullock les canons, les armes, les projectiles, les poudres, le combustible et enfin les salaires et les vivres de l'équipage.

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ART. 5. Les bâtiments seront munis d'une machine à vapeur de 300 chevaux de force, de 200 kilogrammes le cheval, à condensation, construite par M. Mazeline du Havre.

ART. 6. Les deux navires devront être admis et prêts à faire leurs essais dans un délai de dix mois.

* * * * * * *

ART. 9. Le prix de chacun de ces navires est fixé à la somme de deux millions de francs, qui sera payée à Paris un cinqième comptant.

* * * * * * *

ART. 11. M. Bullock a désigné la maison É. Erlanger et Cie, comme étant chargée d'effectuer les paiements à Paris et devant accepter les clauses financières du présent traité.

Le 17 juillet, M. Voruz aîné écrit:

Je reçois aujourd'hui une lettre d'Arnous, de Bordeaux, qui me dit qu'Arman vient de signer le marché pour deux canonnières blindées, de 300 chevaux de force, pour deux millions chaque.

Enfin, le 12 août, M. Bullock, resté chargé, par l'article 3 du traité du 16 juillet ci-dessus, des canons, des armes, des projectiles, etc., [249] pour les deux canonnières blindées, adressait à M. Voruz *la lettre suivante:

LIVERPOOL, 12 *août* 1863.

J'ai reçu, M. Voruz, votre lettre, du 4 courant, avec les indications de prix du canon de 30, et de ses accessoires. Il ne m'est pas possible de dire si je vous donnerai un ordre positif et direct pour de semblables canons avant d'avoir appris du capitaine Blakeley comment l'affaire de son propre modèle de canon cerclé à été comprise. Je serais cependant charmé de traiter une affaire avec vous, si nous pouvons nous accorder sur les conditions. Nous discuterons tout cela quand j'irai à Nantes.

Il est dans mes intentions de confier mes affaires à aussi peu de mains que possible, et j'espère que nous tomberons d'accord sur tous les points essentiels, de telle sorte que *nos relations pourront prendre une plus grande extension même en cas de paix. Notre gouvernement aura besoin, sans doute, pendant un certain temps, de s'adresser en France pour la construction de ses vaisseaux et machines, et*, pour ce qui me concerne personnellement, je serais enchanté que les rapports que j'ai eus avec vous vous amenassent pour l'avenir à des commandes plus considérables encore. Veuillez, s'il vous plaît, m'informer si les corvettes avancent et me dire quand les seconds paiements seront dus. Je vous écrirai une semaine avant mon arrivée à Nantes.

BULLOCK.

[250] *Les termes de cette lettre s'appliquent évidemment au projet d'armement des deux canonnières blindées, dont la construction a été l'objet du traité passé à Bordeaux, le 16 juillet, entre MM. Arman et Bullock. Ce dernier, capitaine au service de la confédération des états du sud, a agi d'ordre et pour compte de son gouvernement. Il n'est

pas possible de méconnaître que ces deux canonnières sont, ainsi que les quatre navires pour lesquels avait été conclu le marché du 15 avril précédent, destinées au service des états-confédérés du sud dans la guerre qu'ils soutiennent contre les états fédéraux de l'Amérique du Nord.

La preuve matérielle de ces faits résulte trop évidemment des conventions passées entre les diverses personnes qui ont participé à leur réalisation, et de la correspondance échangée entre elles pour le règlement de leurs intérêts particuliers. Les faits sont de la plus haute gravité. Expressément interdits à tous les Français par la déclaration impériale du 10 juin 1861, ils constituent de flagrantes violations des principes du droit des gens et des devoirs imposés aux sujets de toute puissance neutre, devoirs dont l'accomplissement loyal est la première garantie du
respect dû à la liberté des états neutres et à la dignité de leurs
[251] *pavillons. Ce sont là des actes de manifeste hostilité contre
l'une des deux parties belligérantes à l'égard desquelles le gouvernement français a résolu de maintenir une stricte neutralité.

> Il faut éviter (dit Vattel, livre 3, chapitre 7) de confondre ce qui est permis à une nation libre de tout engagement, avec ce qu'elle peut faire si elle prétend être traitée comme parfaitement neutre dans une guerre. Tant qu'un peuple neutre veut jouir sûrement de cet état, il doit montrer, en toutes choses, une exacte impartialité entre ceux qui se font la guerre; car, s'il favorise l'un au préjudice de l'autre, il ne pourra pas se plaindre quand celui-ci le traitera comme ahérent et associé de son ennemi. La neutralité serait une neutralité frauduleuse, dont personne ne veut être la dupe.
>
> Cette impartialité, (ajoute Vattel,) qu'un peuple neutre doit garder, comprend deux choses: 1° ne point donner de secours, ne fournir librement ni troupes, ni armes, ni munitions, ni rien de ce qui sert directement à la guerre.

Ce sont là des actes d'hostilité qui, réprouvés par le droit des gens, sont caractérisés crimes et délits par les lois françaises, qui en prononcent la répression pénale.

L'article 84 du Code pénal est ainsi conçu:

> [252] Quiconque aura, par des actions hostiles, non-approu*vées par le gouvernement, exposé l'état à une déclaration de guerre, sera puni du bannissement; et, si la guerre s'en est suivie, de la déportation.

Cette disposition de la loi est, dans l'opinion du soussigné, évidemment applicable aux auteurs et complices des faits qui sont résumés plus haut. Quels que soient les motifs et quel que soit le caractère de la lutte si déplorablement engagée au sein de l'Union américaine, soit qu'on la considère comme une guerre civile, même comme une insurrection d'une partie de la nation américaine contre le Gouvernement établi, soit que l'on envisage la séparation qui veut s'opérer les armes à la main, comme une division de la nation en deux peuples différents, la guerre entre ces deux parties, nous dit encore Vattel, retombe à tous égards dans le cas d'une guerre publique entre deux nations différentes. Les peuples qui ne veulent point être entraînés à prendre part à cette guerre doivent se renfermer dans les stricts devoirs de la neutralité qu'ils proclament.

Au milieu du déchirement intérieur de la nation américaine, dans l'état de paix où est la France avec le gouvernement des États-Unis, dans l'état
des relations d'amitié et de commerce qui lient les deux pays, il
[253] n'est pas d'action hostile qui puisse provoquer plus d'irritation *et
faire soulever contre la France de plus justes griefs que le secours et la fourniture d'armements maritimes donnés par des Français à l'ennemi du Gouvernement de Washington, au moyen des traités conclus avec les confédérés, et de construction de navires et de fabrication d'armes de guerre opérées publiquement dans les ports, sur les chantiers et dans les usines de la France.

L'action des entrepreneurs de ces armements est d'autant plus compromettante, et expose d'autant plus notre pays à être considéré comme ennemi et à voir faire contre lui une déclaration de guerre, que les armements dont il s'agit se font avec des autorisations régulièrement données par l'administration française. Ce n'est plus ici le cas d'appliquer les principes qui règlent d'ordinaire, à l'égard des nations neutres, les conséquences des expéditions de contrebandes de guerre, quoique naviguant sous pavillon neutre. Les expéditeurs de ces marchandises, telles que les armes, les munitions, toutes les matières préparées pour la guerre, sont seuls responsables : Elles peuvent être saisies et déclarées de bonne prise, leur pavillon ne les couvre pas ; mais il n'en résulte aucune responsabilité à la charge du gouvernement auquel ces expéditeurs et armateurs appartiennent.

[254] *Dans les traités et dans l'exécution des traités intervenus entre les constructeurs français et les agents des états-confédérés, le nom et l'autorité du gouvernement français ont été compromis par les autorisations accordées. Les faits se présentent donc avec le caractère d'une action hostile de la part de notre gouvernement contre le gouvernement américain. Avec ce caractère, les faits pourraint donc exposer la France à une déclaration de guerre.

Mais il est vrai de dire que cette apparente compromission du gouvernement français n'est que le résultat du dol pratiqué par les constructeurs et participants du traité du 15 avril, qui, à l'aide d'une fausse indication de la destination des navires, ont trompé les ministres de la marine et de la guerre. Que des explications loyalement données de gouvernement à gouvernement, que le retrait des autorisations accordées à MM. Arman et Voruz, fassent tomber toute plainte et récrimination de la part du gouvernement des États-Unis, le caractère criminel des faits dont ces messieurs et leurs coopérateurs se sont rendus coupables n'en sera pas modifié, et ils n'en auront pas moins fait des actions hostiles qui
[255] exposaient la France à une déclaration de guerre; ils sont *donc
dans le cas textuellement prévu par l'article 84 du Code pénal. Ils n'ont pas le droit d'alléguer qu'ils ont été légalement autorisés par le gouvernement. La fraude dont ils ont usé, viciant dans leur essence même les actes dont ils prétendaient se prévaloir, leur culpabilité est aggravée aux yeux de la justice française.

Il est d'autres de nos lois dont les contractants et participants des marchés des 15 avril et 16 juillet 1863 ont frauduleusement éludé les dispositions.

La loi du 24 mai 1834 porte :

> ART. 3. Tout individu qui, sans y être légalement autorisé, aura fabriqué ou confectionné des armes de guerre, des cartouches et autres munitions de guerre . . . . sera puni d'un emprisonnement d'un mois à deux ans et d'une amende de 16 francs à 1,000 francs.
>
> ART. 4. Les infractions prévues par les articles précédents seront jugées par les tribunaux de police correctionnelle. Les armes et munitions fabriquées sans autorisation seront confisquées.

Dans l'intérêt du développement de la fabrication française et de notre commerce extérieur, une ordonnance royale, du 12 juillet 1847, a
[256] réglé l'application de cette loi de 1834 *et les formalités administratives qui doivent être remplies par les fabricants d'armes.

On lit dans l'article 1^er de l'ordonnance du 12 juillet :

> Conformément à l'article 3 de la loi du 24 mai 1834, tout individu qui voudra fabriquer ou confectionner des armes de guerre pour l'usage des navires de commerce, devra obtenir préalablement l'austorisation de notre ministre secrétaire d'état au département de la guerre, et de notre ministre secrétaire d'état au département de la marine et des colonies, quant aux bouches à feu et aux munitions.

Dans la pratique, ces dispositions de l'ordonnance qui semblaient n'être applicables qu'à l'armement de nos navires de commerce, ont ét étendues à la fabrication et à la livraison des armes de guerre au commerce étranger.

Pour obtenir les autorisations toujours requises en pareil cas, et pour pouvoir livrer aux confédérés les armements de guerre qu'ils s'étaient engagés à leur fournir, MM. Arman et Voruz ont addressé leurs demandes à MM. les ministres de la marine et de la guerre. Les autorisations leur ont été accordées, même ils ont obtenu la permission de visiter les établissements de l'état pour profiter des améliorations apportées à l'outillage.

[257] *C'est à la vue de ces autorisations qu'il a dit lui paraître suffisantes que l'agent diplomatique des confédéres à ratifié, le 6 juin 1863, le traité passé le 15 avril précédent entre MM. Arman et Bullock. Mais, comme on l'a vu dans la lettre adressée par M. Arman à M. le ministre de la marine le 1^{er} juin, ce n'est qu'en trompant sciemment le ministre sur la destination des armements dont ils voulaient munir les quatre navires construits à Bordeaux et à Nantes que ces messieurs se sont fait accorder les autorisations qu'ils sollicitaient indûment.

De telles autorisations subrepticement obtenues doivent donc être considerées comme nulles et de nul effet. MM. Arman, Voruz et leurs complices sont donc dans un cas de violation de la loi du 24 mai 1834, et sous le coup des peines correctionelles qu'elle prononce.

Le crime et le délit résultant de la violation de l'article 84 du Code pénal et de la loi de 1834 constituent MM. Arman et Voruz et leurs co-intéressés contrevenants aux défenses et recommendations contenues dans la déclaration impériale du 10 juin, et doivent être, ainsi qu'il est dit dans cette déclaration, poursuivis conformément aux dispositions de la loi.

Les faits qui doivent donner lieu à ces poursuites légales ont été commis au préjudice et contre la sécurité du gouvernement des Étas-Unis.

Il est hors de doute que le gouvernement est en droit, comme tout [258] étranger, de se *pourvoir devant les tribunaux français pour réclamer la répression et la réparation de faits accomplis en France qui lui sont dommageables. Ici, le dommage est incontestable, parce que, indépendamment de la livraison des navires et de leurs armements de guerre, le fait notoire de la construction et de l'armement en France, sous l'apparente autorisation du gouvernement français, de navires de guerre destinés aux confédérés, était en lui-même pour ceux-ci un puissant encouragement à soutenir la lutte, et portait ainsi un incalculable préjudice au Gouvernement fédéral.

Il reste au soussigné à indiquer au Gouvernement des États-Unis quelles voies judiciaries il peut suivre pour faire prononcer contre les coupables les réparations qui lui sont dues, et quelles doivent être ces réparations.

Le Gouvernement des États-Unis peut rendre plainte devant les tribunaux français pour raison des faits dont la criminalité vient d'être établie, et notamment quant au crime prévu par l'article 84 du Code pénal. Cette plainte devra être remise, soit à la diligence d'un agent spécialement autorisé, soit sur la poursuite de l'envoyé extraordinaire et plénipotentiaire des États-Unis en France, au procureur impérial.

Conformément aux dispositions des articles 63 et 64 du Code d'instruction criminelle, la plainte peut être portée, ou devant le magistrat du lieu où le crime et le délit ont été commis, ou devant celui de [259] la résidence de l'inculpé. Comme il y *a plusieurs complices et agents des faits incriminés, le juge du domicile de l'un d'eux est compétent pour recevoir la plainte, et tous les complices seront appelés devant lui en raison de la connexité des faits dénoncés.

MM. Bullock et Slidell, agents des confédérés, sont, quoiqu'étrangers, justiciables des tribunaux français pour raison des faits coupables qu'ils ont provoqués ou auxquels ils ont participé sur le territoire français. La plainte devra énoncer les faits inculpés et être appuyée des pièces justificatives.

Pour faire prononcer les réparations qu'il se propose de demander, le Gouvernement américain devra, par son agent spécial, déclarer qu'il entend se constituer partie civile—c'est-à-dire, qu'il entend soutenir la poursuite à fin de réparation, concurremment avec le ministère public. En se constituant partie civile, le Gouvernement des États-Unis doit être averti qu'il pourra être tenu de donner caution *judicatum solvi*, aux termes de l'article 166 du Code de procédure civile, ainsi conçu:

> Tous étrangers, demandeurs principaux ou intervenants seront tenus, si le défendeur le requiert, avant toute exception, de fournir caution et payer les frais et dommages-intérêts auxquels ils pourraient être condamnés.

Enfin, il faut faire observer que l'une des personnes contre lesquelles la plainte devra être portée collectivement est membre du Corps législatif, et qu'en raison de la qualité qui lui appartient, avant de [260] donner suite à la plainte, le ministère public devra demander *à l'assemblée l'autorisation de poursuivre, conformément à l'article 11 du décret organique de février 1852.

Dans le cas où l'on ne voudrait porter plainte que pour raison de la violation de la loi du 24 mai 1834 et de l'ordonnance de 1847, au lieu de soumettre la plainte au juge d'instruction ou de la remettre au procureur impérial, l'action devant être portée devant un tribunal correctionnel, le Gouvernement américan pourrait procéder par voie de citation directe, et il porterait devant le juge correctionnel sa demande à fin de réparations civiles et de dommages-intérêts.

Dans le cas enfin où le Gouvernement des États-Unis renoncerait à intenter, pour raison des faits dont il s'agit, soit une action au criminel par voie de plainte, soit une simple action correctionnelle, il peut séparer l'action civile de l'action publique, et intenter contre ceux qui lui ont fait préjudice une action devant les tribunaux civils, sauf au ministère public à exercer l'action publique en répression du crime et du délit, s'il le juge à propos.

Devant le tribunal civil, le Gouvernement des États-Unis n'aura à invoquer, en justifiant des actes dont il a souffert, que les dispositions de l'article 1382 du Code civil, où il est écrit:

> [261] Tout fait quelconque de l'homme, qui cause *à autrui un dommage oblige celui, par la faute duquel il est arrivé, à réparer.

À fin de réparation du crime ou du délit commis envers lui, le Gouvernement fédéral demandera, à titre d'indemnité, la confiscation des constructions et fabrications faites à son préjudice. Il pourra même, après avoir intenté le procès, demander, à titre de mesure conservatrice, d'être autorisé à saisir provisoirement, et à ses risques et périls, tous les objets construits et fabriqués, comme éléments des faits criminels dont la réparation peut être ainsi ordonnée sans que, devant les juridictions compétentes, les dispositions des lois pénales aient reçu leur application.

Délibéré à Paris, le 12 novembre 1863.

BERRYER,
Ancien Bâtonnier de l'Ordre des Avocats de Paris.

[262] *E.

Translation of the opinion of Mr. Berryer.

The undersigned, formerly advocate, after examination of the consultative memoir presented in the name of the United States of America, together with the documents justificative, hereto annexed, and after deliberation upon the questions submitted to him, is of the following opinion:

From the *exposé* contained in the memorandum and the accompanying documents results the complete proof of the facts, which it will be advantageous first to recapitulate.

In the month of February, 1861, several of the Southern American States, until that time under the Government of the Federal Constitution of the United States, resolved to separate themselves from the Northern States, and assembled a congress for the purpose of constituting the government of the Confederate States of America. War between the confederates and the Federal Government broke out in the month of April.

On the 10th of June, in the same year, in the official part of the Moniteur, a declaration appeared, submitted by the minister of foreign affairs to the Emperor of the French and by him approved.

[263] *By this solemn act the Emperor, considering the peaceful relations existing between France and the United States of America, resolved to maintain a a strict neutrality in the struggle commenced between the Government of the Union and the States pretending to form a distinct confederation.

It declares, among other things:

> 3. All Frenchmen are forbidden to take a commission from either of the two parties for arming vessels of war, * * * or to co-operate in any manner whatsoever in the equipment or armament of a war-vessel or corsair of either of the parties.
>
> 5. Frenchmen residing in France or in other countries will be required equally to abstain from every act which, committed in violation of the laws of the empire or of the laws of nations, could be considered as a hostile act by one of the parties, and contrary to the neutrality which we have resolved to maintain.

The imperial declaration ends thus:

> Offenders against the prohibitions and recommendations contained in the presen declaration will be prosecuted, if opportunity shall offer, in conformity with the terms of the law of the 10th of April, 1825, and of articles 84 and 85 of the penal code, without prejudice to the application which may be made in the case of such offenders of [264] *the terms of article 21 of the code Napoléon, and of articles 65 and following of the decree of the 24th of March, 1802, concerning the merchant marine, 313 and following of the penal code for the navy.

In spite of this public declaration of the neutrality of France, in spite of the formal prohibitions which it pronounces in conformity with the law of nations and the special laws of France, an agreement was signed on the 15th of April, 1863, between Lucien Arman, ship-builder at Bordeaux, and James Dunwoody Bullock, an American, agent of the confederate government, stipulating that it is by the order and for the account of his principal, whose duly-executed power of attorney it declares him to have produced.

For the execution of the agreement Mr. Bullock names the banking-house of Mr. Erlanger, of Paris.

By this agreement Mr. Arman "engages to construct four steamers of four hundred horse-power, and arranged for the reception of an armament of from ten to twelve cannons."

It is stipulated that Mr. Arman shall construct two of these ships in his yards at Bordeaux, and shall *intrust the execution of two other ships to Mr. Voruz, to be constructed at the same time in his yards at Nantes.*

To disguise the destination of these four ships the agreement states that they are intended to establish a "regular communication between Shanghai, Jeddo, and San Francisco, passing the strait of Van [265] Dieman, and also that they are to *be fitted out, should the opportunity present itself, for sale to the Chinese or Japanese empire."

Finally Mr. Bullock engages to make known to the constructors the banking-house which will be charged with effecting the payment at Paris of the price of each of these ships, which is fixed at the sum of 1,800,000 francs.

The 1st of June following, Mr. Arman, in order to conform to the royal ordinance of 12th July, 1847, addressed to the minister of marine a demand for authorization to supply with an armament of twelve to fourteen thirty-pound cannon four steamships, iron-clad, in process of construction, *two in his ship-yards at Bordeaux, one in that of Jollet & Babin at Nantes, and one in that of Mr. Dubigeon at Nantes.*

> These ships (it is said in the letter addressed to the minister) are destined for a foreign shipper, to do service in the Chinese seas and on the Pacific between China, Japan, and San Francisco. Their special armament has the additional object of permitting their eventual sale to the government of China and Japan.
>
> The cannons will be made under the superintendence of Mr. Voruz, sr., of Nantes.

Mr. Arman's letter ends as follows:

> *The construction being under way since the 15th of last April, I pray your excellency to grant Mr. Voruz, as soon as possible, the authorization I solicit and which the royal ordinance of July 12, 1847, requires.*

Upon this *exposé*, and for the supposed destination of the four ships, authorization was accorded by the minister of marine on the 6th June, as requested by Mr. Arman.

[266] *On the same 6th of June Mr. Slidell, another agent of the government of the Confederate States, addressed to Mr. Arman the following letter:

> In consequence of the ministerial authorization which you have shown me, and which I deem sufficient, the agreement of the 15th of April becomes obligatory.

Three days after, the 9th of June, Mr. Erlanger, a banker at Paris, whom Bullock had named in the agreement of the 15th of April, and who was to guarantee the payments to the constructors of the four ships, wrote to Mr. Arman:

> I engage to guarantee you the first two payments for the ships *which you are building for the confederates,* in consideration of a commission, &c.

The financial conditions proposed by Mr. Erlanger were accepted by Mr. Arman, who, the same 9th of June, addressed to Mr. Voruz, at Nantes, the following telegram:

> Mr. VORUZ, *Grand Hôtel, Paris:*
>
> I have signed, without modification, the letter to Erlanger. It is on the way.
>
> ARMAN.

On his part, Mr. Erlanger wrote on the same day to Voruz, at Nantes:

> Here are the letters of engagement, the contract, and the copy. As you are living under the same roof with Captain Bullock, you will perhaps be good enough to have him sign the copy of the contract. I have written directly to Mr. Arman. Receive, &c.

[267] *On the next day, the 10th of June, Mr. Arman addressed to Mr. Voruz, sr., a letter to the following effect:

> DEAR MR. VORUZ: I have to acknowledge receipt of your registered letter of the 9th, and of the draft of Bullock for 720,000 francs, which was inclosed. I hasten to discharge

you, as you desire, from the documents signed by you in the hands of Mr. Bullock for the first payment of the two ships of four hundred horse-power, which I am constructing for the account of the confederates simultaneously with those which you are having built by Messrs. Jollet & Babin and Dubigeon.

I pray you to arrange in such manner as to obtain from Mr. Bullock the promise to re-imburse us finally on account of the discounts of guarantee we are paying to Mr. Erlanger. Receive, &c.

On the other hand, Messrs. Jollet & Babin and Dubigeon, charged with the construction, in their yards at Nantes, of two of the four ships, as above stated in the letter addressed on the 1st of June by Mr. Arman to the minister of marine, wrote on the 10th of the same month to Mr. Voruz:

DEAR MR. VORUZ: After having noted the financial conditions which have been addressed to you by the house of Erlanger, *as well as the letters which have passed* [268] *between* **you and Messrs. Slidell and Bullock*, we recall to you our verbal agreements, for the purpose of fixing precisely our respective positions in this affair..

Other persons, with full knowledge of the real destination of these constructions and of the naval armaments, were to take a notable part in the benefits to be derived from the operation, and were to support proportionally the discount of guarantee stipulated in favor of Mr. Erlanger. It is to arrive at an understanding upon this last head that Mr. Henri Arnous Rivière, a merchant at Nantes, wrote on the 8th of June to Mr. Voruz, sr.:

The financial complication arisen in the affair of which the contract was signed on the 15th of April last, between Arman, yourself, and Captain Bullock, is the motive of the proposition which I am about to submit to you.

Messrs. Mazetin & Co., of Havre, were charged with preparing the steam-engines for the four screw-steamers whose hulls were building in the yards of Bordeaux and Nantes. But were they ignorant of the actual destination of these war-ships when they wrote to Voruz, sr., on the 23d of June, 1863?

MONSIEUR: *In signing* some days since the Bullock agreement, &c., we omitted to correct an error in the dimensions of the engines, &c. We pray you to write us that the last measures, *which are those in construction*, are those agreed on between us.

[269] *All then was perfectly agreed upon between the different participants for the execution of the agreement completed on the 15th of April, 1863, between Arman, the French builder, and Captain Bullock. This agreement had been expressly ratified by Slidell, the diplomatic agent of the Confederate States, according to his letter addressed to Mr. Arman on the 6th of June, 1863. The ministerial authorization required by French law for the construction and armament of ships of war has been accorded; the administration having doubtless been deceived by the pretended destination that a *foreign* shipper had in view for these ships of war, in the China seas and the Pacific, and by the *eventual* condition of a sale to the governments of China and Japan. But their real destination for the service of the belligerent States of the South is perfectly known to all the parties interested.

The construction of the vessels, their engines, and armaments is in full activity. The payments, guaranteed to the constructors by a powerful banking-house, are partially effected.

A second operation was to take place. On the 14th of July, 1863, Voruz, sr., writing from Paris to his son Anthony, announces to him that Captain Bullock and Mr. Arman set out the evening before for Bordeaux, together with Erlanger, the banker, and that there was question of an agreement *for some iron-clads*. At the same time he told him [270] that an arrangement had been completed with a *Mr. Blakeley, an English iron-founder, for furnishing 48 cannon with 200 balls each.

The agreement, said he, is made in such a manner as to insure to us the exclusive furnishing of all *which can be executed* in France.

On the 15th of July, the same Voruz, recalling to the attention of the minister of marine the fact that by his letter of the 6th of June he had been good enough to authorize the preparation, in his works at Nantes, of *the cannons necessary for the armament of four ships, of which two are being constructed at Bordeaux in the yards of Mr. Arman and two in the yards at Nantes*, demands of the minister permission to visit the government establishment at Rueil, to see the improvements made in utensils, &c. This permission was given on the 9th of August.

A new agreement was signed in duplicate at Bordeaux, the 16th of July, 1863:

It has been agreed between Mr. Arman, ship-builder at Bordeaux, deputy of the Corps Législatif, No. 6 quai de la Monnaie, and Mr. James Dunwoody Bullock, acting under orders and for the account of principals whose duly-executed power of attorney he has produced, electing domicile with M. M. Émile Erlanger, 21 rue de la Chausée d'Antin, Paris, as follows:

ART. 1. Mr. Arman engages with Mr. Bullock, who accepts the terms, to con-
[271] struct for his account, in his *yards at Bordeaux, two screw-steamships of wood
and iron, of 300 horse-power, with two screws, with two iron-clad turrets, in
conformity with the plan accepted by Mr. Bullock.

ART. 3. The cannons, arms, projectiles, powder, combustibles, and finally the salaries and provisions of the sailors, shall be at the sole charge of Mr. Bullock.

ART. 5. The ships are to be provided with an engine of 300 horse-power, at 200 kilograms the horse, constructed by Mr. Mazeline, of Havre.

ART. 6. The two ships shall be admitted and ready to make their trial trips in ten months.

ART. 9. The price of each of these ships is fixed at the sum of 2,000,000 francs, which shall be paid at Paris, one-fifth down.

ART. 11. Mr. Bullock has designated the house of É. Erlanger & Co. as the one charged with effecting the payments at Paris and with accepting the financial conditions of the present agreement.

The 17th of July, Mr. Voruz, sr., writes:

I have received to-day a letter from Arnous, at Bordeaux, who says that Arman has just signed the agreement for two iron-clad gun-boats of three hundred horse-power for 2,000,000 *francs each.*

Finally, on the 12th of August, Mr. Bullock, remaining charged by
Article 3 of the agreement of July 18th, above named, with pro-
[272] viding cannons, arms, projec*tiles, &c., for the two iron-clad gun-
boats, addressed to Mr. Voruz the following letter:

LIVERPOOL, *August* 12, 1863.

I have received, Mr. Voruz, your letter of the 4th instant, with statements of the price of the 30-pound cannon and accessories. It is impossible for me to say whether I shall give you a positive and direct order for such cannon before learning from Captain Blakeley how his own model of hooped cannon has been received.

I should be glad, however, to make an arrangement with you if we can agree upon the conditions. We will discuss all this when I go to Nantes. It is my intention to intrust my affairs to as few hands as possible, and I hope we shall agree in all essential points in such manner that our relations may proceed on a larger scale, even in case of peace. Our government will have need, doubtless, during a certain period, of sending to France for its vessels and engines, and, so far as I am personally concerned, I should be much pleased if our past relations should lead to orders still more considerable in the future.

Will you, if you please, inform me if the corvettes are progressing, and tell me when the second payments will be due?

I shall write you a week before my arrival at Nantes.

BULLOCK.

[273] *The terms of this letter apply evidently to the project of arm-
ing the two iron-clad gun-boats, the construction of which was
the object of the agreement executed at Bordeaux the 16th of July, be-
tween Arman and Bullock. This latter, a captain in the service of the

Confederate States of the South, has acted by the order and for the account of his *government*. It is impossible not to understand that these two gun-boats, as well as the four ships, for which the agreement of the 15th of the preceding April had been concluded, are destined for the service of the Confederate States of the South in the war which they are carrying on with the Federal States of the North.

The material proof of these facts results too evidently from the agreements concluded between the different persons who have participated in their fulfillment, and from the correspondence exchanged between them for the regulation of their particular interests.

These facts are of the gravest importance. Expressly forbidden to all Frenchmen by the imperial declaration of the 10th of June, 1861, they constitute flagrant violations of the principles of the law of nations and of the duties imposed upon the subjects of every neutral power; duties, the loyal observance of which is the foremost guarantee of the respect due to the liberty of neutral states and to the dignity of their flags. These are acts of manifest hostility against one of the two belligerent parties in regard to whom the French government has *resolved to maintain a strict neutrality.*

> [274] *It is necessary to avoid (says Vattel, lib. III, chap. 7) confounding what is allowed to a nation free from all engagements from what it may do if it expects to be treated as perfectly neutral in a war. So long as a neutral people desires securely to enjoy that position, they should show, in all things, an exact impartiality toward those who carry on war. For, if this people *favors one to the prejudice of the other*, it cannot complain when the latter treats it as an adherent and ally of its enemy. Its neutrality would be a *fraudulent neutrality*, of which no one wishes to be the dupe.
>
> This impartiality (adds Vattel) which a neutral people ought to observe, comprises two things: the refusal to protect or voluntarily to furnish either troops, arms, munitions, or anything of direct service in war.

These are acts of hostility which, forbidden by the law of nations, are characterized as crimes and misdemeanors by the French laws, which decree their repression under penalties. Article 84 of the penal code is conceived in the following terms:

> *Whoever, by hostile acts not approved by the government, shall have exposed the state to a declaration of war, shall be punished with banishment, and, if war is the result, with deportation.*

[275] This provision of the law is, in the opinion of the *undersigned, evidently applicable to the authors and accomplices of the facts recapitulated in the foregoing.

Whatever may be the motives and whatever the character of the struggle so deplorably carried on in the heart of the American Union, whether it be considered as a civil war or as an insurrection of a part of the American nation against the established Government, whether one regards the separation which is seeking to effect itself by force of arms as a division of the nation into two distinct bodies—into two different peoples—*war between these two parts, Vattel continues, falls in all respects within the pale of a public war between two different nations.*

The nations which do not wish to be forced to take part in this war should keep themselves within the strict limits of the neutrality which they proclaim. In the midst of the internal dissension of the American nation, in the peaceful state existing between France and the Government of the United States, in the relations of amity and commerce which unite the two countries, there is no hostile act that can provoke more irritation and awaken against France juster grievances than giving protection and furnishing naval armaments by the French to the enemy of the Government of Washington, by means of treaties with the confederates and of naval constructions and the fabrication of weap-

[276] ons of war, carried on publicly *in the ports, ship-yards, and workshops of France.

The action of parties undertaking these armaments is all the more compromising, and exposes our country all the more to the danger of being considered hostile, and of provoking against itself a declaration of war, for the reason that the armaments in question are made with the regular authorization of the French administration. It is no longer a case for the application of the principles which ordinarily govern in regard to neutral nations, the consequences of shipments of *contraband.* Although navigating under a neutral flag, the shippers of such merchandise, arms, munitions, and all material prepared for war, are alone responsible; they can be seized and declared as prize—their flag does not cover them—but there results no reponsibility on the part of the government to which such shippers and fitters-out belong. In the agreements and in the execution of the agreements entered into between the French builders and the agents of the Confederate States, the name and authority of the French government have been compromised by the authorizations accorded.

The facts then present themselves with the character of a hostile act on the part of our government against the Government of the United States.

With this character, the facts may then expose France to a declaration of war.

[277] *But it may be truly said that this apparent compromise of the French government is simply the result of deceit practiced by the constructors and parties to the agreement of the 15th of April, who, by misrepresentation of the destination of the ships, deceived the ministers of marine and of war.

Let the explanations loyally given by government to government, let the withdrawal of the authorizations granted to Arman and Voruz remove all complaint and recrimination on part of the United States Government; the criminal character of the acts of which these gentlemen and their co-operators have rendered themselves guilty will not be modified, and they will have none the less committed *hostile acts* which expose France to a declaration of war; they are then within the case provided for in the text of article 84 of the penal code. They have no right to allege that they have been legally authorized by the Government.

The fraud which they have practiced vitiating the very essence of the acts of which they would pretend to take advantage, their guilt is thereby aggravated in the eyes of French justice.

There are other of our laws whose provisions the contractors and parties to the agreements of the 15th of April and of the 16th of July, 1863, have fraudulently eluded.

[278] *The law of the 24th of May, 1834, declares:

> ART. 3. Every person who, without being thereunto legally authorized, shall have manufactured or completed arms, cartridges, and other munitions of war, shall be punished with imprisonment from one month to two years, and with a fine of from sixteen to a thousand francs.
>
> ART. 4. The misdemeanors provided for by the preceding articles shall be adjudged by the tribunals of correctional police; the arms and munitions manufactured without authorization *shall be confiscated.*

In the interest of the development of French manufacturers and of foreign commerce, a royal ordinance of the 12th of July, 1847, has regulated the application of this law of 1834, and the formalities which are to be observed by the manufacturers of arms.

We read in the first article of the ordinance of the 12th of July:

> Conformably to article 3 of the law of the 24th of May, 1834, every person who shall

desire to make or construct arms of war for the use of ships of commerce shall previously obtain authorization from our minister secretary of state for the department of war and from our minister secretary of state for the department of marine and of the colonies, so far as relates to cannon and munitions.

[279] *Practically these provisions of the ordinance, which seem to be applicable only to our commercial marine, have been extended to the manufacture and delivery of implements of war for foreign commerce.

In order to obtain the authorizations always required in such cases and to provide for the delivery to the confederates of the armaments of war which they had engaged to furnish them, Messrs. Arman and Voruz addressed their demands to the ministers of marine and of war.

The authorizations have been accorded them; they have even obtained permission to visit the government establishments, in order to profit by the improvements there effected. It is in view of these authorizations, which he declared seemed to him sufficient, that the diplomatic agent of the confederates ratifies, on the 6th of June, 1863, the treaty concluded the 15th of April preceding between Messrs. Arman and Bullock.

But, as we have seen in the letter addressed by Arman to the minister of marine on the 1st of June, it was only by willfully deceiving the minister with regard to the destination of the armaments with which they desired to supply the four ships constructed at Bordeaux and at Nantes, that these gentlemen caused to be accorded them the authorizations which they unduly solicited.

[280] *Such authorization, surreptitiously obtained, ought then to be considered as null and of no effect. Messrs. Arman, Voruz, and their accomplices are then in violation of the law of the 24th of May, 1834, and liable to the correctional penalties which it decrees.

The crime and misdemeanor resulting from the violation of article 84 of the penal code, and of the law of 1834, constitute Messrs. Arman and Voruz, and those interested with them, *offenders against the prohibitions and recommendations contained in the imperial declaration of the 10th of June*, and should be, as declared in that declaration, prosecuted conformably to the provisions of the law.

The acts which ought to give rise to these legal prosecutions have been committed to the prejudice and against the security of the Government of the United States.

This Government has the undoubted right, as has every foreign government, to demand before the French tribunals the repression and the reparation of acts committed in France which are prejudicial to it.

Here the prejudice is incontestable, because, independently of the delivery of the ships and of their armaments of war, the notorious fact of construction and armament in France, under the apparent authorization of the French government, of ships of war destined for the [281] confederates, was in itself, for the latter, a power*ful encouragement to sustain the struggle, and thus an incalculable prejudice was offered to the Federal Government.

It remains for the undersigned to indicate to the Government of the United States what judicial means may be resorted to to obtain from the offenders the satisfaction due from them, and what this satisfaction should be.

The Government of the United States can prosecute before the French tribunals on account of the acts whose criminality has just been established, and especially on account of the crime provided for by article 84 of the penal code. This complaint should be intrusted either to the diligence of a special authorized agent, or upon prosecution by the minister plenipotentiary of the United States to the *procureur impérial.*

Conformably to the provisions of articles 63 and 64 of the code of criminal instructions, complaint may be made, either before the magistrate of the place where the crime or offense has been committed, or before the magistrate of the residence of the criminal.

As there are several accomplices and agents incriminated by the acts, the judge of the residence of one of them is competent to receive the complaint, and all the accomplices will be called before him by reason of the connection of the acts denounced. Messrs. Bullock and Slidell, agents of the confederates, are, although foreigners, legally responsible before the French tribunals by reason of the criminal acts which they have instigated, or in which they have participated upon French soil. The complaint should set forth the criminal acts, and should be supported by justificative documents.

To obtain the decree of satisfaction which it is proposed to demand, the American Government should by its special agent declare that it intends to constitute itself a civil party; that is to say, that it intends to sustain the prosecution concurrently with the public minister.

[282] *In constituting itself a civil party, the Government of the United States should be informed that it may be held to furnish a guarantee *judicatum solvi*, according to the terms of article 166 of the code of civil procedure, thus conceived:

> All foreign claimants, principals, or attorneys will be held, if the defendant requires it, without exception, to furnish guarantee to pay expenses and penalties to which they may be condemned.

Finally, it should be observed that one of the persons against whom the complaint should be collectively made is a member of the Corps Législatif, and that, by reason of his position, before making complaint, the public minister must demand of the assembly authorization to prosecute, conformably to article 11 of the decree of February, 1852.

In case it should be desired to prosecute only for the violation of the law of the 24th of May, 1834, and of the ordinance of 1847, instead of submitting the complaint to the *juge d'instruction* or of lodging it with the *procureur impérial*, the action should be brought before a correctional tribunal; the American Government may then proceed by direct [283] citation, and *may bring before the correctional judge its demand for civil satisfaction, damages, and interest.

Finally, in case the Government of the United States should renounce its intention, by reason of the facts in question, to prosecute criminally by way of complaint, or by simple correctional action, it may separate the civil from the public action, and proceed against those who have acted to its prejudice, in an action before the civil tribunals, reserving to the public minister the right of public action for repression of crimes and offenses, if he shall judge proper.

Before the civil tribunal, the Government of the United States has only to appeal in judicial proceedings for the acts from which it has suffered to the provisions of article 1382 of the civil code, where it is written:

> Every act whatsoever of a man which causes loss to another, obliges him, by whose fault it has been committed, to repair the loss.

As a reparation of the crime or offense committed against it, the Federal Government will demand, under the title of indemnity, the confiscation of the objects constructed and the manufactures made to its prejudice. It may even, after having commenced the process, [284] demand, as a *protective measure, authorization to seize provisionally, and at its own risk and peril, all the objects constructed and manufactured, being elements of the criminal acts, which reparation may be ordered before the provisions of the penal laws shall have received their application before the competent jurisdiction.

Pronounced at Paris, the 12th of November, 1863.

BERRYER,
Ancien Bâtonnier de l'Ordre des Avocats de Paris

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[285] *F.

CORRESPONDENCE RELATIVE TO ARMAN RAMS.

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

PARIS, *September* 18, 1863.

SIR: I have this morning called the attention of Mr. Drouyn de Lhuys to the evidence showing that at least four, if not five, ships are being built in the ship-yards at Bordeaux and Nantes for the confederates. This evidence is the same as that sent to you from the Paris consulate, and which I referred to in my dispatch No. 344. It is conclusive, I think, as to the facts charged. Mr. Drouyn de Lhuys expressed himself as greatly surprised, and I doubt not he was so. He assured me he had no knowledge of anything of the kind, and that the government would maintain its neutrality. He thanks me for calling his attention promptly to this matter, the importance of which he fully recognized.

He requested copies of the original papers; said that he would at once investigate the facts and the French legislation bearing on the question, and then let me know what would be done.

[286] *It seems to me that their action on this subject is likely to afford a pretty good test of their future intentions. As to what the law may be, it does not, I apprehend, much matter; if they mean that good relations with our country shall be preserved, they will stop the building of these ships, or at least the arming and delivering of them; if they mean to break with us, they will let them go on.

I am, sir, your obedient servant,

WM. L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c.

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

PARIS, *October* 8, 1863.

SIR: The minister of marine has been absent some days recently, and this has been assigned to me by Mr. Drouyn de Lhuys as a reason why my communication as to the rebel ships now being built at Bordeaux and Nantes had not been definitely answered.

I left some additional evidence with him this morning, to wit: copy of contract between Arman and Bullock for building two iron-clads,
[287] dated *16th July last; copy of letter from Émile Erlanger to Voruz, sr., dated 9th June last; copy of letter from Mazeline & Co. to

Voruz, sr., dated 23d June last; copy of letter from O. B. Tollet, and L. Babin, and E. Dubigeon and fils, to Voruz, 10th June last; copy of agreement between Bullock and Voruz, dated September 17, 1863, increasing the number of cannon contracted for from forty-eight to fifty-six, and the number of shells from five thousand to twelve thousand.

Mr. Drouyn de Lhuys did not intimate any doubt as to the facts charged, and the minister of marine, he said, had informed him that in granting the authorization to build and arm these vessels he did it as a matter of course, as he had done in like cases before, supposing that the representation in the application, that they were intended for the China sea, &c., was true. But Mr. Drouyn de Lhuys said that he, the minister of marine, entirely agreed with him that no violation of the neutrality of France should be permitted, and he (Mr. Drouyn de Lhuys) said I might be assured that it would not be.

I am, sir, your obedient servant,

WILLIAM L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State.

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[288] **Mr. de Lhuys, minister of foreign affairs, to Mr. Dayton, United States minister.*

[Translation.]

PARIS, *October* 15, 1863.

SIR: You have done me the honor to write to me, to call my attention to agreements entered into (marchés passés) in France, according to information which you have communicated to me, for the construction and delivery to the seceded States of several vessels armed for war. You have expressed the desire that the official authorization accorded for the armament of these vessels might be withdrawn, and that the government of the Emperor might take measures which it should judge proper, to prevent the completion and delivery of the vessels themselves. I hastened to speak of this matter to my colleague of the department of the marine, recommending it very particularly to his examination. I do not believe that I can do better than to transmit to you, sir, a copy of the answer which he has just addressed to me. The only information which the department of the marine had directly received concerning the operation in question attributed to them, as you will see, is of
[289] such a character that, up to the present moment, there * was no motion for hindering them. It is only, then, by the explanations which he is going to call forth, by the aid of the papers which you have brought to my knowledge, that M. le Comte de Chasseloup Laubat shall be able to judge of the measures to be taken conformably to our declaration of neutrality.

Accept the assurances of the high consideration with which I have the honor to be, sir, your very humble and very obedient servant,

DROUYN DE LHUYS.

Mr. DAYTON,
Minister of the United States at Paris.

[290] [*Inclosure.]

M. the minister of the marine to M. the minister of foreign affairs.

[Translation.]

PARIS, *October* 12, 1863.

M. THE MINISTER AND DEAR COLLEAGUE: You have done me the honor to communicate to me, the 25th of September last, the copy, with its annexes, of a letter from M. the minister of the United States at Paris, relative to bargains entered into by Messrs. Arman and Voruz for the construction and delivery to the confederate government of several vessels armed for war. In pointing out to my attention the gravity of this matter, which you recommend in a manner altogether special to my examination, you express the regret that my department had not thought proper to come to an understanding with that of the foreign affairs before answering the requests of Mr. Arman, who had obtained from the marine the authorization to provide his vessel with twelve cannon of 30 pounds. As to that which concerns the authorization solicited by Mr. Arman, and which was necessary to him by the terms of the ordinance of the 12th July, 1847, I did not believe I ought to refuse it in consequence of the declaration of the constructor, who gave me the assurance, as moreover his correspondence with my department proves, that the vessels in construction in his work-yards were destined to do service in the China seas and the Pacific, between China, Japan, and San Francisco.

[291] *I could not, upon such a declaration, and knowing, besides, that the vessels of commerce which navigate the parts in question ought always to be furnished with certain armament, in view of the numerous pirates which infest them, I could not, I say, answer negatively to the request of Mr. Arman, nor refuse Mr. Voruz the permission to manufacture the cannon intended to form this armament. This last authorization was the consequence of that given to the constructor to provide his vessels with artillery.

In granting to Mr. Voruz the permission to procure at Reuil the elucidations necessary to the manufacture of his cannon, I followed *that which has always been done by my department* in analogous circumstances, commerce only exceptionally giving itself to a manufacture which, in France, is seldom carried on, save by the government. As to the regrets expressed by your excellency that the department of foreign affairs has not previously been consulted, I will cause you to remark that it was a question of arms to be caused to be manufactured by private industry, and not of material of war appertaining to the state and delivered by the magazines of the state. This difference will not escape your excellency, and I would not have failed to come to an understanding [292] *with you if there had been asked of my department arms of the marine. Upon the whole, my department has only conformed in this circumstance to its precedents. It could only trust to the declaration of Messrs. Arman and Voruz, and it could not be responsible for the unlawful operations which might be undertaken. I am going, however, to call forth from Messrs. Arman and Voruz explanations upon the facts of which you have spoken to me, and you may rest assured, M. and dear colleague, that the department of the marine will continue, as it has done up to the present day, to do everything which shall be necessary according to the wish of the Emperor, and conformably to the declaration of his government, in order that the most strict neutrality be observed in that which concerns the war which desolates America at this moment, &c.

CHASSELOUP LAUBAT.

Mr. Drouyn de Lhuys, minister of foreign affairs, to Mr. Dayton, United States minister.

[Translation.]

PARIS, *October* 22, 1863.

SIR: I have the honor to announce to you, as a sequence to my
[293] letter of the *15th of this month, that M. the minister of marine
has just notified Mr. Voruz of the withdrawal of the authorization which he had obtained for the armament of four vessels in course of construction at Nantes and Bordeaux. Notice has also been given to Mr. Arman, whose attention has been at the same time called to the responsibility which he might incur by acts in opposition to our declaration of the 18th of June, 1861. These measures testify, sir, to the scrupulous care which the government of the Emperor brings to the observance of the rules of a strict neutrality. It is in order to give to your Government a new proof of our disposition in this respect that we have not hesitated to take into consideration the information, the authenticity of which you have affirmed to me.

Accept the assurances of the high consideration with which I have the honor to be, sir, your very humble and very obedient servant,

DROUYN DE LHUYS.

Mr. DAYTON,
Minister of the United States at Paris.

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

[Extract.]

[294] *PARIS, *November* 27, 1863.

SIR: I yesterday saw Mr. Drouyn de Lhuys for the first time within the last fortnight. His absence from Paris, and pressing engagements the week before, have prevented his receiving the diplomatic corps for business. * * * He said, furthermore, that he had himself personally informed Messrs. Arman and Voruz, (the constructors and iron-founders,) engaged on the vessels now being built at Bordeaux and Nantes, that the work thereon must cease unless they could satisfy him that they were honestly intended for another government; and he added to me that he would at once refer their proceeding to the minister of marine. * * * * * *

I am, sir, your obedient servant,

WILLIAM L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c.

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

[Extract.]

PARIS, *December* 31, 1863.

SIR: * * * In my last conversation with Mr. Drouyn d
[295] Lhuys, he informed me that *Mr. Arman, the builder of thes
vessels, was seeking purchasers for them other than the confed

erates, and that the minister of marine did not think himself authorized, therefore, to prevent their completion, although he would prevent their being armed or delivered by Arman to the confederates.

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I am, &c.,

WM. L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State.

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

PARIS, *February* 5, 1864.

SIR: * * * M. Drouyn de Lhuys told me yesterday that Arman (the builder of the iron-clad rams for the confederates, at Bordeaux) had just informed him that he had sold them to the Danish government, but before he (M. Drouyn de Lhuys) acted upon that assumption this government would have the best and most satisfactory evidence of the correctness of this statement. At present he does not consider the statement of the fact to me as official, but says he will make it so as soon as he shall receive the necessary proof. * * * *

I am, sir, &c.,

WM. L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

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[296] **Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.*

[Extract.]

PARIS, *February* 19, 1864.

SIR: * * * * * * *

M. Drouyn de Lhuys says that he believes the iron-clads at Bordeaux are sold to a neutral, but I received information from Mr. Wood, our minister at Copenhagen, that the minister of foreign affairs of Denmark says he does not know, nor has he ever heard, of any negotiation for the purchase or building for that country of any ships in France. M. Drouyn de Lhuys tells me, and I do not doubt but that he has given notice to Mr. Arman (the builder of the iron-clads, and the contractor for the four other ships building for the confederates) that France must be relieved from all trouble in reference to any of them, and Arman has promised him that France shall be. He says that the four other vessels are building for commerce, and that he can and will sell them to neutral parties. In the mean time, I can and will keep a sharp eye to the entire proceeding.

I am, sir, your obedient servant,

WM. L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State.

[297] *_Mr. Dayton, United States minister, to Mr. Seward, Secretary of State._

PARIS, _March_ 11, 1864.

SIR: M. Drouyn de Lhuys informs me that in a recent interview with Arman, the ship-builder at Bordeaux, he (Arman) assured him that not only the iron-clad vessels he was building at Bordeaux, but the other four vessels (two at Nantes and two at Bordeaux) would certainly be disposed to neutral governments in such manner as to relieve France from any trouble or responsibility on the subject. These vessels, I may add, are in the steady course of construction, the work being constantly advanced upon them.

I am, sir,

WM. L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State.

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[298] *_Discours de M. Rouher, ministre d'état._

[Du Moniteur Universel, page 670.—Vendredi, 13 mai 1864.]

CORPS LÉGISLATIF, _(Séance du_ 12 _mai_ 1864.)

M. ROUHER, _Ministre d'État:_ . . . . Si j'examine le discours de l'honorable M. Jules Favre, en prenant ses objections dans un ordre inverse à celui qu'il a adopté, le premier point que je rencontre est cette prétendue violation des règles de la neutralité commise par la France vis-à-vis des états du nord de l'Amérique.

Messieurs, les questions de neutralité, l'étendue des devoirs des neutres, ont donné, dans tous les temps, matière à des difficultés, à des conflits nombreux. Je ne veux pas retracer ici les phases diverses que le droit des neutres a subies dans le code international; mais ce que je peux dire à l'honneur de la politique de notre pays, c'est que tout ce qu'il y a eu d'idées libérales, progressives, généreuses, introduites dans la législation des neutres, est parti du gouvernement français. [C'est vrai! c'est vrai!]

Aussi, lors de la déclaration de la guerre en Amérique entre les états du nord et les états du sud, nous n'avons pas failli à ces précé-
[299] dents, et nous avons posé, dès les premiers jours, les *principes de neutralité qui devaient régir toute notre conduite.

Dans la déclaration du 10 juin 1861, insérée au Moniteur, acte officie émané du souverain, il est dit par à l'article 3:

> Il est interdit à tout Français de prendre commission de l'une des deux parties pou armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la cour maritime, ou de concourir d'une manière quelconque à l'équipement ou à l'armemen d'un navire de guerre ou corsaire de l'une des deux parties belligérantes.

Au mois de juin 1863, une demande a été adresseé par deux con structeurs français pour l'exécution de deux steamers, avec l'indicatio que ces navires étaient destinés à naviguer dans les mers de Chine.

M. le ministre des États-Unis, au mois de décembre 1863, a invoqu des lettres, des documents, que, des circonstances dont nous n'avons p voulu approfondir le caractère, avaient mis en la possession de M. Da ton, il a soutenu que ces navires étaient destinés aux confédérés. U enquête s'est ouverte immédiatement.
[300] Les armateurs ont été interrogés; leurs *explications ont

appréciées, et l'autorisation, un instant donnée, a été retireé par le gouvernement.

Plus tard, quelques doutes se sont élevés; ces steamers, qui ne sont pas en partance, ont été indiqués comme destinés à la Suède. De nouvelles informations ont été prises. Cette indication n'a pas paru suffisamment démontrée, et, à la date du 1er mai 1864, il y a dix jours, le ministre de la marine écrivait au ministre des affaires étrangères:

> Les navires de guerre que vous nous avez signalés ne sortiront des ports français que le jour où il sera démontré d'une manière positive que leur destination n'affecte point les principes de neutralité que le gouvernement français veut rigoureusement observer à l'égard des belligérants.

Voilà la conduite qui a été tenue sans équivoque, de la manière la plus nette et la plus précise, par le gouvernement de l'Empereur.

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[301] *Speech of M. Rouher, minister of state.

[Translation.]

[From the Moniteur Universel, of Friday, May 13, 1864, p. 670.]

CORPS LÉGISLATIF, (*Session of the* 12*th May*, 1864.)

Mr. ROUHER, *Minister of State:* If I examine the speech of the Hon. Mr. Jules Favre, taking his objections in an order the reverse of that adopted by him, the first point I meet is the pretended violation of the laws of neutrality committed by France against the States of the North of America.

Gentlemen, questions of neutrality, as regarding the duties of neutrals, have been always the causes of difficulties and of numerous conflicts. I will not here trace the different phases through which the law of neutrals has passed in the international code; but what I may say to the honor of the policy of our country is that all liberal, progressive, and generous ideas introduced into the law of neutrals originated with the French government. [True, true.] Accordingly, after the declaration of war in America between the States of the North and the States of the South, we have followed these precedents, and we announced [302] at an early day the principles of neutrality *which were to regulate our conduct.

In the declaration of the 10th of June, 1861, an official act emanating from the sovereign, inserted in the Moniteur, it is stated in Article 3:

> All Frenchmen are forbidden to take a commission from either of the two parties to arm vessels of war, or to accept letters of marque for a cruise, or to assist in any manner in the equipment or armament of a war-vessel or privateer of either of the belligerents.

In the month of June, 1863, a formal request was made by two French builders for the right to construct two steamers, with the information that these vessels were intended to navigate the Chinese seas. Mr. Dayton, the minister of the United States, in the month of December, 1863, called our attention to certain letters and documents, which circumstances, into the character of which we have not wished to inquire, had put into his hands; he maintained that these vessels were for the confederates. An inquiry was immediately instituted; the owners were questioned; their explanations were weighed, and the authorization formerly given was withdrawn by the government.

Later, doubts arose; it was intimated that these steamers, which had not yet sailed, were intended for Sweden. New testimony was taken, and this intimation not appearing to be sufficiently proved, the

[303] minister of the *marine wrote to the minister of foreign affairs,
under the date of May 1, 1864, ten days ago, as follows:

> The vessels of war to which you have called our attention shall not leave the ports of France until it shall have been positively demonstrated that their destination does not affect the principles of neutrality which the French government wishes to rigidly observe toward both belligerents.

Such is the conduct which has been maintained without equivocation, and in the clearest and most precise manner, by the government of the Emperor.

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Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

PARIS, *May* 16, 1864.

SIR: At a special interview accorded to me on Saturday last, M. Drouyn de Lhuys informed me not only that the two iron-clads, now being constructed by Arman, at Bordeaux, under contract with the confederates, have been positively sold to a neutral power, but he assured me distinctly that the four clipper-ships in the course of construction at Bordeaux and Nantes, under a like contract, should not be delivered to the confederates. As two of these vessels are approaching completion,
I confess I was much gratified by receiving this distinct assurance.
[304] His language was most explicit, and I thanked *him accordingly.

I am, sir, &c.,

WM. L. DAYTON.

HON. WILLIAM H. SEWARD,
Secretary of State.

Mr, Seward, Secretary of State, to Mr. Dayton, United States minister.

DEPARTMENT OF STATE,
Washington, June 28, 1864.

SIR: Mr. Geofroy has to-day submitted to me a dispatch which has been received from M. Drouyn de Lhuys, in which he states the fact of the sale of two ships, the Yeddo and the Osacca, which Arman built for the insurgents, to alleged neutrals, to be delivered in Holland, substantially on the same terms as those which M. Drouyn de Lhuys made in communicating that transaction to yourself, as you have related them to us in your dispatches. In the absence of full and definite information about the names, condition, or character of the alleged purchaser, the terms of his contract or the other circumstances of the alleged sale, this Government is not prepared to pronounce its acquiescence in the disposition of the subject which has been made by the French government.

We are to be understood, therefore, as maintaining in regard to
France all the protests we have heretofore made concerning those
[305] vessels, and reserving all *the rights and remedies in respect to
the vessels themselves which belong to the United States under
the law of nations.

At the same time we willingly believe that the French government has taken proper care to guard against the vessels being used for making war upon the United States.

I am, sir, &c.,

WILLIAM H. SEWARD.

WILLIAM L. DAYTON, Esq.

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

[Extract.]

PARIS, *September* 30, 1864.

SIR: I saw M. Drouyn de Lhuys on yesterday. He received me in a very cordial manner, but said, smilingly, that I wrote him a sharp dispatch; in allusion to that I had sent him the day before, inclosed to you in No. 542.

I said no, but I had answered temperately a sharp dispatch he had sent to me from the minister of marine; and I added that that dispatch had surprised me very much, as there was certainly nothing in my letter, to which this dispatch from the minister of marine purports to be an answer, to justify it. M. Drouyn de Lhuys then said they certainly intended to watch those vessels at Bordeaux and Nantes as [306] *closely as possible; and he thought that this letter from the minister of marine, stating that these vessels *should not be delivered to the confederates*, put the matter in the best possible shape for me.

I told him I thought so too, and was satisfied, and had so informed the commanders of the Niagara and Sacramento. * * *

I am, sir, &c.,

WM. L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State.

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[307] *No. 3.—CASE OF THE RAPPAHANNOCK.

Mr. Dayton, United States minister, to M. Drouyn de Lhuys, minister of foreign affairs.

PARIS, *December* 4, 1863.

M. LE MINISTRE: A ship called by her captain the Rappahannock, and purchased for the confederates of the South, has made her escape from the British port of Sheerness without papers, and run into the port of Calais. She claims, I am informed, that she is driven in to repair her machinery, rigging, &c.

The facts as communicated to me are certain:

1. That she has been bought and fitted up by the confederates, to cruise against and destroy our commerce.

2. That, anticipating or fearing detention, she escaped in an unfinished condition from the port of Sheerness, England, and has come over to Calais to complete her equipment, &c.

3. That a number of young Americans (some twelve or fourteen, I think) have been awaiting at Calais the arrival of this vessel to go aboard of her as officers or crew, and that upon a signal from the vessel they made an attempt by a ruse to accomplish their purpose. This shows that the vessel did not come in as pretended, "en relache force."

[308] *4. Our consular agent writes me that it is quite evident the vessel left the English port suddenly and unexpectedly, with the mechanics employed on her yet on board; that considerable reparations and changes are yet to be made upon her; that her rigging is incomplete, and the ropes and pulleys are yet scattered over the decks. He informed me also that it is understood the captain had said that he had applied, or would apply, to the minister of marine for permission to take out and entirely repair her boilers.

5. I inclose likewise copies of two affidavits sent to me from the United States legation at London, proving that the vessel left the English port to go to Calais; that she was then incomplete; that she waits at the port of Calais for her crew, and that she is, as her captain says, a confederate privateer.

It is quite evident that this vessel occupies a position which differs from either the Florida or the Georgia. She has left her port on the other side of the channel, voluntarily, without papers, and run directly across to a neighboring port, within which she hopes to be protected until her equipment is completed, and her officers and crew ready.

On this statement of facts no argument is necessary to show that permission from the French authorities to carry out her purpose would be a violation of neutrality.

[309] *May I beg the attention of your excellency, therefore, immediately to this question.

I have the honor to be, &c.,

WM. L. DAYTON.

His Excellency Mr. DROUYN DE LHUYS,
Minister of Foreign Affairs, Paris.

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

PARIS, *December* 25, 1863.

SIR: My dispatch No. 387 incloses to you a copy of a note recently sent to Mr. Drouyn de Lhuys, in reference to the rebel vessel called the Rappahannock, lying at Calais. I now beg to inclose to you a translation of Mr. Drouyn de Lhuys's reply. I should add that in the course of conversation had with him yesterday he admitted that this vessel was, in his judgment, an exceptional case, inasmuch as she was not driven in by stress of weather or necessity, but came voluntarily, to complete her equipment; and that, in this respect, her case was unlike the case of either the Florida or Georgia. He said, further, that he understood the minister of marine agreed with him in this view, but nothing has yet been done. I am daily expecting some orders from the minister of marine in reference to this vessel.

I am, sir, &c.,

WM. L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State.

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[310] **M. Drouyn de Lhuys, minister of foreign affairs, to Mr. Dayton, United States minister.*

[Translation.—Extract.]

PARIS, *December* 23, 1863.

SIR: I have received the letters which you have done me the honor to address me, dated the 4th, 12th, and 19th of this month, to communicate to me the information which had been transmitted to you in regard to the vessel Rappahannock.

I have taken care to give notice of them to the minister of marine whose information was still incomplete, and I await the result of the inquiry into which our authorities are obliged to proceed, in order to judge of the difference which you point out between the position of the vessel and that of the Florida and of the Georgia.

I think, indeed, with you, that it is desirable to avoid giving an equitable base for future reclamations. It is with this feeling that the government of the Emperor has always been studious to act, and it will not depart therefrom in this circumstance.

Accept, sir, the assurances of the high consideration with which I have the honor to be, &c.,

DROUYN DE L'HUYS.

Mr. DAYTON,
Minister, &c., &c.

Mr. Drouyn de Lhuys, minister of foreign affairs, to Mr. Dayton, United States minister.

[Translation.]

[311] *PARIS, *January* 13, 1864.

SIR: I have just received the answer of the minister of marine to the communications which I had addressed him, as I have had the honor to inform you by my letter of the 23d of last month, in regard to the stay at Calais of the vessel the Rappahannock. It appears from it that this matter has already attracted the attention of M. le Cte. de Chasseloup Laubat, and that he had hastened to give the necessary orders that the captain of the vessel referred to might be able solely to put it in a state of navigability, and revictual with provisions, and coal. It results also from an inquiry which was entered into on the spot, that Calais was not at all the port of destination of the Rappahannock when she left the shores of England; that unforeseen accidents only led her to take refuge in our waters, and that we could not under the circumstances refuse her an asylum any more than to any other vessel placed in the same situation. This vessel has been, however, and continues to be, the object of special surveillance, and you yourself will be satisfied with the care with which watch is kept that no suspicious object be introduced on board, by reading the report on this subject addressed to the department of the marine by the competent local authority, and herewith annexed in copy. I will add that M. le Cte. de Chasseloup Laubat in limiting the facilities accorded to the Rappahannock to what is demanded for the equipment and seaworthiness of an ordinary vessel of commerce, has besides given directions not to authorize her to prolong her stay at Calais, so soon as she shall be in a state to go to sea.

Receive the assurances of the high consideration, &c.

DROUYN DE LHUYS.

Mr. DAYTON,
Minister of the United States at Paris.

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[312] **Mr. Dayton, United States minister, to M. Drouyn de Lhuys, minister of foreign affairs.*

PARIS, *February* 2, 1864.

MONSIEUR LE MINISTRE: I have just received information from our consular agent at Calais that the confederate war-vessel Rappahannock has completed her repairs and equipment, and is about to leave that port; and he further says that it appears by a shipping gazette that a ship has gone out of the Thames laden with munitions of all kinds for the Rappahannock.

If this be true (and it is probable) its effect upon the public mind of my country, and the view likely to be taken of it by my Government must be obvious.

The Rappahannock is a confederate cruiser, and not a vessel of commerce. To equip her in one neutral port as such, when it is well understood she is to be immediately supplied from another neutral port with arms to prey upon our commerce, is, I submit, to aid directly in the principal wrong.

The ports of England and France alternating in the character of their aid, might in this way be made the easy means, or base, of military operations against us.

It is perfectly certain that the United States Government will never acquiese in the justice or legality of such proceedings. And I now, with great respect, give formal notice that reclamation will be made in [313] due time *for all damages which shall be done by the Rappahannock to our commerce, in case she be permitted under the circumstances to go to sea.

Accept, sir, the assurance of high consideration with which I have the honor to be your excellency's very obedient servant,

WILLIAM L. DAYTON.

His Excellency M. DROUYN DE LHUYS,
Minister of Foreign Affairs, Paris.

Rules in regard to belligerent vessels in French ports.

[Translation.]

MINISTRY OF MARINE AND OF THE COLONIES.

The minister of marine and of the colonies to the maritime prefects; general officers, superiors, and others commanding at sea; commandant of marine in Algeria; governors of colonies; commissaries general of marine; chiefs of the marine service in secondary ports; and administrators of the maritime inscription.

FIRST DIRECTION—SECOND BUREAU.—MOVEMENTS.

Rules to be observed in regard to vessels of belligerents.

PARIS, *February* 5, 1864.

GENTLEMEN: By its declarations of the 10th of June, 1861, inserted in the Moniteur, the Emperor's government has made known the [314] principles which serve as a basis to * the neutrality it intended to observe in the war which insanguines North America.

Since then, these principles have received their application as well in our colonies as in the ports of the mother country.

But the continuation of the war having led the belligerents to carry the theater of maritime hostilities into the neighboring waters of the neutral states of Europe and brought them to seek in our ports the means of repairs or of provisioning, the Emperor's government has deemed it useful to remind you again of the rules to be observed in order to maintain its neutrality, conformably to public law and to the traditions of the French marine, and to determine consequently on the treatment which is to be applied, without distinction of flag, to the vessels of the belligerents.

You will therefore have to attend to the strict execution of the following regulations:

1st. No vessel of war or belligerent privateer will be allowed to stay more than twenty-four hours in a port of the empire of the French colonies, or in the adjacent waters, except in the case of a forced putting in on account of bad weather, of injuries, or of exhaustion of provisions, necessary to the safety of the voyage.

2d. In no case can a belligerent make use of a French port for a purpose of war, or for there supplying himself with arms or munitions of war, or for there [315] *executing, under pretext of repairs, works whose object is to increase his military power.

3d. There can only be furnished to a vessel of war or belligerent privateer the provisions, stores, and means of repair necessary for the subsistence of her crew and for the safety of her voyage.

4th. No vessel of war or belligerent privateer allowed to take in provisions or to make repairs in a French port can prolong her stay there beyond twenty-four hours after her supplies shall have been shipped and her repairs finished, except in the case hereinafter provided for.

5th. When vessels of war, privateers, or merchant-vessels of the two belligerent parties are found together in a French port, there shall be an interval of not less than twenty-four hours between the departure of any vessel (of one of the belligerents, and the subsequent departure) of any vessel of war or privateer of the other belligerent.

This delay shall be extended, in case of need, by order of the maritime authority, as long as may be necessary.

You will take care to make known the foregoing regulations to every vessel of either of the belligerents which may come into the ports, roadsteads, or waters subject to your command.

Accept, gentlemen, the assurance of my very distinguished consideration.

COUNT P. DE CHASSELOUP LAUBAT,
Minister Secretary of State, of Marine, and of Colonies.

Inserted in the official bulletin, 1864.

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[316] **Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.*

[Extract.]

PARIS, *February* 19, 1864.

SIR: I yesterday communicated to Mr. Drouyn de Lhuys the contents of your dispatch No. 468, and I did this the more readily as, in its main features, it was a reiteration from you of views that I had individually already expressed to him. I read to him that part of your dispatch in which you state that the decision of the French government in respect to the Rappahannock, co-operating with other causes, will be a trial to the friendship of our country toward France, for which, after the protests we have made, not our Government, but "the Emperor, will be responsible." He said, in reply, that we must deal with things as they were. That France having acknowledged the South as belligerents, he could do nothing less than treat them as such. That, keeping that position in view, the Florida and Georgia had been received in their ports. That the Florida had been repaired, though little had been done to the Georgia, and nothing had been done to either of these vessels except what was essential to their "*navigability.*" That their fighting powers had not been improved, nor had a French seaman been permitted to embark on either of them. That in respect to these vessels, therefore, he thought they had kept within the limits of clear rules of international law.

That in respect to the Rappahannock, she had not yet been permitted to leave port, nor would she be permitted to leave [317] *until his government, by a most rigorous and careful examination, had satisfied itself that no rule of war had been violated. She had been permitted to repair as a vessel of commerce only, and if we anticipated that she was to be converted into a ship of war by guns from England, it was against England, and not France, we should complain; but if the fact turned out as I insisted, that she was no vessel of commerce, but a ship of war, then he admitted that if she came into a French port, not by stress of weather, but voluntarily to finish her equipment, and she were permitted to leave, it would be a breach of the proclamation of neutrality published by the Emperor; but the question of fact, he said, was yet in the course of investigation. I repeated to him the evidence on this question, (a summary of which will be found, by the way, in the first dispatch I sent to him on this subject December 4 last.) He seemed to consider, however, that I presented the subject in some new lights, and said he would again refer the matter to the minister of marine. The line of distinction between what they might properly do, and what they might not, was, he said, in his mind quite clear. If a war-vessel came into their ports from stress of weather they were bound to let her repair damages, adding nothing, except such repairs, to her fighting qualities; but if such a vessel came into port in an unfinished condition they could not rightfully permit her to finish her equipment, for that would be to shape a harmless log or mass of timber into a fighting-ship. I told him that he and I did not then differ in this case so much about the law as about the fact, and I yet hoped that on the further investigation, which he promised, this vessel might be stopped.

I am, sir, your obedient servant,

WM. L. DAYTON.

Hon. WM. H. SEWARD,
Secretary of State.

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[318] **M. Gosselin au Lieutenant Campbell.*

CALAIS, *le* 4 *février* 1864.

MONSIEUR: Je viens de recevoir de son excellence le ministre de la marine et des colonies une dépêche contenant des ordres précis formels en ce qui concerne votre bâtiment; et la notification que je dois vous en faire m'est, veuillez n'en pas douter, très pénible; pourtant, la communication que j'ai eu l'honneur de vous faire le 11 du mois dernier, et à la suite de laquelle vous m'avez déclaré pouvoir être en état complet de prendre la mer à environ une semaine de cette date, tout en vous faisant pressentir la possibilité des mesures survenues aujourd' hui, a dû vous préparer a y faire face.

J'ai donc le regret, monsieur, de vous informer que le gouvernement de sa Majesté l'Empereur a décidé que j'intimerai "l'ordre au Rappahannock de quitter le port de Calais à la marée qui suivra la réception de cette lettre," et que, faute par vous d'obtempérer à cette injonction, il ne vous serait plus permis de quitter ce port qu'à la fin des hostilités [319] entre les États-Unis et *les confédérés.

Le long séjour de votre bâtiment à Calais, et surtout le temps écoulé depuis l'avis précité, me font espérer, monsieur, qu'il vous sera possible d'ici minuit de hâter vos derniers préparatifs, de telle sorte que la décision de laquelle je viens d'avoir l'honneur de vous faire part reçoive son exécution.

J'ajouterai, monsieur, malgré la nature épineuse de mes relations officielles avec vous, je désire vivement que le bref délai qui vous est accordé soit pourtant suffisant. Ai-je besoin d'insister, monsieur, au moment de votre départ sur ce que les rapports et les réponses que j'ai eu à adresser à l'égard de votre bâtiment ont été constamment conformes à la vérité, telle que mes investigations personnelles et impartiales me l'ont fait trouver, et que mes explications ont été toujours loyales, sincéres et complètes?

Je vous prie de vouloir bien, en raison de son importance, m'accuser réception de la présente.

Veuillez recevoir, monsieur, l'expression de ma considération très-distingué.

Le commissaire de l'inscription maritime:

GOSSELIN.

À Monsieur CAMPBELL,
Lieutenant Commandant le Vapeur Rappahannock.

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[320] **M. Gosselin au Lieutenant Campbell.*

CALAIS, *le* 10 *février* 1864.

MONSIEUR: J'ai l'honneur de vous accuser réception de la lettre que vous m'avez adressée hier.

J'ai également l'honneur de vous informer que, par suite à la lettre que vous m'avez adressée, dans laquelle vous me faisiez connaître que vous seriez prêt à partir aussitôt l'arrivée de votre charbon, et que j'ai transmise à son excellence, le gouvernement de sa Majesté l'Empereur vient de me prescrire de vous maintenir dans le bassin jusqu'à nouvel ordre, et que vous ne pouvez sortir du port que lorsque j'aurai reçu de nouvelles instructions à ce sujet. Les mêmes instructions ont été données à M. le commandant du Galilée.

Agréez, monsieur, l'assurance de ma considération distinguée.

Le commissaire de l'inscription:

GOSSELIN.

Monsieur CAMPBELL,
First Lieutenant, Commandant le Rappahannock.

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[321] **Mr. Gosselin to Lieutenant Campbell.*

[Translation.]

CALAIS, *February* 4, 1864.

SIR: I have just received a dispatch from his excellency the minister of marine and the colonies, containing summary and formal orders rela-

tive to your vessel, and the notification I am obliged to make you in this respect, do not doubt, is very painful to me; nevertheless, the communication which I had the honor to send you on the 11th of last month, where I presented to you the possibility of the very measures which are now taken, and in consequence of which you declared to me that you would be in condition to go to sea in about a week from that date, must have prepared you to encounter them.

I regret, sir, to inform you that the government of His Majesty the Emperor has decided that I shall order the "Rappahannock to leave the port of Calais at the next high tide after the receipt of this letter;" and if you fail to comply with this command you will not be permitted to leave this port until the end of hostilities between the United States and the confederates.

The long stay of your vessel at Calais, and above all the time which has elapsed since the above-mentioned notice, makes me hope, sir, [322] that from now until *midnight it will be possible for you so to hasten your last preparations that the decision with which I have just had the honor to make you acquainted shall be executed.

I have to add, sir, that in spite of my delicate official relations with you, I desire extremely that the brief delay accorded to you should be sufficient. Is it necessary for me to repeat, sir, at the moment of your departure, that the reports and answers which I have had to make relative to your vessel have always been truthfully in accordance with my personal and impartial investigations, and that my explanations have always been loyal, sincere, and complete? I have to request you to acknowledge the receipt of this letter, on account of its importance.

Accept, sir, the expression of my very distinguished consideration.

Le commissaire de l'inscription maritime,

GOSSELIN.

M. CAMPBELL,
Lieutenant, Commanding the Steamer Rappahannock.

Mr. Gosselin to Lieutenant Campbell.

[Translation.]

CALAIS, *February* 10, 1864.

SIR: I have the honor to acknowledge the receipt of your letter of yesterday.

[323] I have also the honor to inform you that in consequence *of the letter addressed by you to me, in which you tell me that you shall be ready to depart upon the arrival of your coal, and which letter I transmitted to his excellency, the government of His Majesty the Emperor has just ordered me to detain you within the basin until further orders, and that you can only leave this port when I shall receive new orders to that effect. The same orders have been given to the commander of the Galilee.

Accept, sir, the assurance of my distinguished consideration.

Le commissaire de l'inscription,

GOSSELIN.

M. CAMPBELL,
First Lieutenant, Commanding the Rappahannock.

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

[Extract.]

PARIS, *March* 25, 1864.

SIR: * * * * * * * * *

My notice to the French government that they would be held responsible for all damages done by the Rappahannock, in case she should be permitted to go to sea, was in anticipation of that event, and in the hope that the question, being thus plainly presented in advance, they might prevent the wrong by forbidding her departure. It has, perhaps, some effect, for she is yet shut up in her basin, with strict orders not to permit her to depart without first obtaining the direct authority of this government.

[324] The officers of the ship, Mr. Drouyn de Lhuys informs *me, "grumble" very much at their enforced detention, but he has informed them that France will not permit her ports to be used for the equipment of vessels of war for the confederates.

I have just received notice from our consular agent at Calais that Captain Campbell, as well as the first lieutenant of the Rappahannock, have left here and gone back to England, with a view, as they said, to buy and equip another ship there; and that a man named Fonteroy (his baggage is marked "Colonel Fonteroy") has taken command of the Rappahannock.

Our consular agent thinks this is preparatory to the vessel's leaving; but it is quite certain that she has had no permit to leave, and had, a day or two since on boarding, neither arms nor crew for any hostile purpose, or indeed to do anything more than navigate her from one port to a neighboring port. * * * * *

I am, sir, your obedient servant,

W. L. DAYTON.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

Mr. Seward, Secretary of State, to Mr. Dayton, United States minister.

[Extract.]

DEPARTMENT OF STATE,
Washington, May 20, 1864.

[325] SIR: I have the honor to acknowledge the receipt *of your dispatch of the 2d of May, No. 460.

You will please express to Mr. Drouyn de Lhuys a high satisfaction on the part of this Government with the information he has given you, that the Rappahannock will not be allowed to enter the piratical service of the enemies of the United States. * * * * * *

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

WILLIAM L. DAYTON, Esq., *&c.*

Mr. Dayton, United States minister, to Mr. Seward, Secretary of State.

PARIS, *June* 10, 1864.

SIR: Looking over my dispatch of the 8th instant, No. 484, I find that I have neglected to say that, in the conference there reported, Mr. Drouyn de Lhuys informed me that no change had been made in the condition of things connected with the Rappahannock, and that no orders had issued, or were about being issued, for its discharge. He said that he had as yet received no answer from the committee of jurisconsults, who had been consulted by him; although, as the senate had now adjourned, and Mr. Troplong, the president, who is chairman of this committee, would be at leisure, he might expect an answer at no distant day.

I am, sir, your obedient servant,

WM. L. DAYTON.

HON. WILLIAM H. SEWARD,
Secretary of State.

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[326] **The minister of the marine and the colonies to Monsieur the vice-admiral, maritime prefect at Cherbourg.*

[Translation.]

CABINET OF THE MINISTER,
Paris, June 15, 1864—noon.

We cannot permit the Alabama to enter into one of our basins of the arsenal, that not being indispensable to place it in a state to go again to sea.

This vessel can address itself to commerce (commercial accommodations) for the urgent repairs it has need of to enable it to go out; but the principles of neutrality, recalled in my circular of the 5th of February, do not permit us to give to one of the belligerents the means to augment its forces, and in some sort to rebuild itself; in fine, it is not proper that one of the belligerents take, without ceasing, our ports, and especially our arsenals, as a base of their operations, and, so to say, as one of their own proper ports.

You will observe to the captain of the Alabama that he has not been forced to enter into Cherbourg by any accidents of the sea, and that he could altogether as well have touched at the ports of Spain or Portugal, of England, of Belgium, and of Holland.

As to the prisoners made by the Alabama, and who have been placed
ashore, they are free from the time they have touched our soil;
[327] but they ought *not to be delivered up to the Kearsarge, which
is a Federal ship of war. This would be for the Kearsarge an augmentation of military force, and we can no more permit this for one of the belligerents than for the other.

Mr. Bigelow, United States minister, to Mr. Seward, Secretary of State.

[Extract.]

LEGATION OF THE UNITED STATES,
Paris, March 3, 1865.

SIR: I have to acknowledge the receipt of dispatches Nos. 39 to 42, inclusive.

I received yesterday from Mr. Dudley, our consul at Liverpool, a letter informing me that that portion of the crew of the confederate cruiser

Florida which was liberated at Boston was paid off at Liverpool on the 20th of February last, and to each was given leave of absence till the 10th instant, when they were to report for duty on board the Rappahannock, at Calais.

I immediately wrote (inclosure No. 1) to Mr. Drouyn de Lhuys, and at an interview which I had with his excellency in the afternoon placed it in his hands. His excellency read it, expressed dissatisfaction with the alleged conduct of the vessel, and said it should be looked into at once.

[328] I remarked that I did not suppose I could say *anything that would make the duty of the government in reference to this abuse of the hospitality of France more clear, and then I went on to other business.

In the course of my conversation upon other topics, I had occasion to refer again to this vessel, as you will see in dispatch No. 42, when he said, "I shall send a copy of your letter to the minister of marine at once," intimating at the same time his decided disapproval of the use made of the Rappahannock, and his determination to have it stopped. * * * I have written to our consular agent at Calais to keep me fully advised of everything that may occur on board the Rappahannock, especially between this and the 10th instant.

I am, sir, with great respect, your very obedient servant,

JOHN BIGELOW.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

Mr. John Slidell to Mr. Drouyn de Lhuys, minister of foreign affairs.

PARIS, *June* 9, 1864.

[329] *SIR: On the 17th February last the Confederate States war-steamer Rappahannock having completed her repairs at the port of Calais and taken on board a supply of coal, her commander notified the authorities of the port of his wish to proceed to sea, when he was informed that instructions had been given by his excellency the minister of marine not to permit the departure of the vessel. On the 26th February, the undersigned had the honor to address your excellency on the subject of this detention, and to demonstrate conclusively, as he thought, that no just cause existed for the detention of the Rappahannock; no answer having been made to this letter, the undersigned, on the 14th March, again addressed your excellency, and requested to be informed of the reasons of the detention. This letter also remaining unanswered, the undersigned advised the commander of the Rappahannock to give notice of his intention to strike his flag, withdraw his crew, and abandon his vessel to the proper authorities of the port. This step was accordingly taken by the commander, who, on the 16th, informed in writing the commissary of marine at Calais of his intention to abandon his vessel on the 15th of May. In the mean while the undersigned was verbally informed that the question of the Rappahannock had been referred for examination and report, by your excellency, to a commission of jurisconsults, and having reason to expect a prompt and definite solution of the question, advised the commander of the vessel not to carry out the intended abandonment.

More than month has now elapsed since the reference to the com-

[330] mission of jurisconsults, and the prospect of a definite *solution of the question seems to be as remote as ever. The undersigned considering a longer acquiescence in the detention of the Rappahannock, without even the allegation of a cause for her detention, incompatible with the respect due to the flag of the government that he has the honor to represent, intends to renew the advice heretofore given to her commander to strike his flag and abandon his vessel. He ventures to express the hope that your excellency will favor him with a reply to this letter, in order that he may be able to communicate to his government the reasons which have induced your excellency to pursue a course so little in accordance, not only with the good will towards the Confederate States which was supposed to animate the government of the Emperor, but, as the undersigned thinks, in opposition to its proclaimed neutrality. The undersigned prays your excellency to receive the assurance of the great respect with which he has the honor to be your excellency's most obedient servant,

JOHN SLIDELL.

His Excellency Mr. DRUYN DE LHUYS,
Minister of Foreign Affairs.

Mr. Benjamin to Mr. John Slidell.

[Extract.]

DEPARTMENT OF STATE,
Richmond, *June* 23, 1864.

SIR: I can scarcely trust myself with the expression of the indignation felt by the president at the evasions and injustice of the French government in relation to the Rappahannock. He is of opinion that the delay in the action finally taken by you on the subject went [331] *to the extreme verge of propriety, and is gratified to find that the decisive step was adopted of striking her flag and leaving her to the responsibility of the French government. The speech of Mr. Rouher on the 12th ultimo in the French chamber, and the circular letter of Mr. Drouyn de Lhuys of 4th ultimo, as given in that speech, have just reached us in the Index of 19th May, and may probably be regarded as correctly translated by Mr. Holze. They indicate so complete an "extente" between the cabinets of Washington and Paris, that we should be blind indeed if we failed to attach to these incidents their true significance.

I am, very respectfully, your obedient servant,

J. P. BENJAMIN,
Secretary of State.

Hon. JOHN SLIDELL, &c., *Paris.*

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[332] **Mr. John Slidell to Mr. J. P. Benjamin.*

[Extract.]

PARIS, *June* 30, 1864.

SIR: * * * * * * * *

I said * * * * that I had asked an interview for the purpose of knowing distinctly what was to be done with the Rappahannock; that she had been detained, without cause assigned, for more than four months; and that I could not obtain a written response to my various communications on that subject. I hoped now to have a verbal one. He said that he had not replied to my communications, because he was not prepared to give a conclusive answer; that he had written the day previous to the president of the senate asking for an early report, and so soon as that should be received he would decide what should be done, and would inform me of his decision. * * *

I have obtained, from a confidential source, a copy of the "dispositif" of the report of the consultative committee in the case of the Rappahannock; it runs thus:

> Le comité est d'avis que c'est seulement sous la condition de reduire l'effectif de l'équipage au nombre des hommes qui étaient sur le navire au jour de la re- [333] *lâche, et après l'accomplissement de cette condition que le gouvernement de l'Empereur devra lever l'interdiction de prendre la mer qui a été prononcée contre le navire confédéré le Rappahannock.

I annex copy of a letter addressed by me to the Duke de Persigny on the subject of the Rappahannock, written at his suggestion, that he might lay it before the Emperor, which he has done.

Considering it of the greatest importance that we should continue to harass and destroy the commerce of the enemy, I have advised Captain Bullock to use every exertion to put to sea at as early a date as possible several cruisers to supply the place of the Alabama, and, as we cannot rely upon having vessels expressly constructed for the purpose, to make use of the fittest instruments that he can command. In this I had but recommended a purpose that he had anticipated, and which will be carried out, and to which Commodore Barron gives his hearty concurrence.

* * *

I have the honor to remain, with great respect, your obedient servant,
JOHN SLIDELL.

Hon. J. P. BENJAMIN,
Secretary of State.

Mr. John Slidell to the Duke de Persigny.

[Extract.]

PARIS, 19 *Rue de Marignan, June* 17, 1864.

[334] *MY DEAR DUKE DE PERSIGNY: To whom but you, the only decided and consistent friend of the confederacy whom it has been my fortune to meet in France, can I apply for advice and assistance under the very disagreeable and embarrassing circumstances in which I find myself?

There is, however, another grievance, comparatively of very minor importance in a material point of view, but of the greatest gravity, inasmuch as it trenches the honor of the confederate flag, for the removal of which I invoke your good offices.

The confederate steamer Rappahannock put into the port of Calais to repair damages which had occurred at sea; she was hospitably received, and completed her repairs with the approbation and under the surveillance of the commissary of marine, acting under the instructions of the minister of marine.

Her commandant desiring to proceed to sea, applied, on the 17th February last, for the necessary permissions, which was denied. The ship is still detained, and up to this moment every explanation of the cause of her detention has been refused. In the month of April the

question of her detention was referred by the minister of foreign affairs to the "comité consultatif du contentien" for examination and report. That committee, provided by the president of the senate and composed of distinguished jurisconsults and diplomatists, has, as I am in-
[335] formed within a few days, *decided unanimously that there was no sufficient cause for the detention of the Rappahannock, and has so reported. I have good reason to believe that the report would have been made much sooner had it not been intimated to Mr. Troplong that it would be well to defer it until the chambers should have adjourned.

I cannot permit myself to believe that in this matter M. Drouyn de Lhuys is acting in strict accordance with the wishes of the Emperor; sure I am, at least, that the Emperor cannot desire that insult should be added to injury, as it unquestionably is, when the minister, although repeatedly asked, will not even condescend to give a reason of any sort for the course he thinks proper to pursue; a course which is in direct opposition to the neutrality which he professes his resolution to maintain.

Am I expecting too much, my dear Duke de Persigny, when I express the hope that your great and well-merited influence will be exercised to obtain, if not redress for what I consider a flagrant wrong, at least some explanation, which will relieve me from the humiliation of finding my remonstrances systematically unnoticed by the minister of foreign affairs.

Believe me, most faithfully and respectfully, your friend and servant,

JOHN SLIDELL.

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[336] **Mr. John Slidell to Mr. J. P. Benjamin.*

[Extract.]

PARIS, *August* 8, 1865.

SIR: Commodore Barron and Captain Bullock have fully advised the secretary of the navy of the reasons which induced Captain Fountleroy not to avail himself of the tardy and ungracious permission for the sailing of the Rappahannock. They may be summed up in the inadequacy of the number of men which he was allowed to retain, the impossibility of shipping and dispatching from England or elsewhere the remainder of the crew, the presence of four of the enemy's cruisers in the neighborhood of Calais, the inability of the ship to carry more than five days' full supply of coal, and her general unfitness for the service in which she was to be employed.

I have the honor to be, with great respect, your most obedient servant,

JOHN SLIDELL.

Hon. J. P. BENJAMIN,
Secretary of State.

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[339] *II.—ITALY.

Codice penale del regno d'Italia.

174. Chiunque con atti ostili non-approvati dal governo del re avrà esposto lo stato ad una dichiurazione di guerra, sarà punito colla relega-

zione; se la guerra ne fosse seguita, la pena sarà dei lavori forzati a tempo.

175. Chiunque con atti non approvati dal governo del re avrà esposto regnicoli a voffrire rappresaglie, sara punito colla relegazione estensible ad anni dieci o col carcere; salve le pene maggiori in cui fosse incorso per gliatti commessi.

Si il colpevole è un punzionario publico soggiacerà alla pena della relegazione.

[Translation.]

Penal statute of the kingdom of Italy.

174. If any person whosoever shall, by acts not authorized by the government of the King, have exposed the state to a declaration [340] of war, he shall *be punished with banishment; if the war has been actually carried out, he shall be punished with temporary penal servitude.

175. If any person whosoever shall, by acts not approved of by the government of the King, have exposed the subjects of the kingdom to reprisals, he shall be punished with banishment even for a term of ten years, or with imprisonment, without prejudice to any further penalty to which he may be liable on account of the acts he has committed. If the offender be a public functionary, he shall be punished with banishment.

These provisions are similar to those of the Code Pénal of France on the same subject, and to those of the Netherlands, Belgium, Bavaria, Spain, Portugal, and other countries of Europe, as collected in the work entitled "Le gularioni comparatodel codice penale Italiano," by Marteno Speciolo Castelleri, p. 284. In all these codes, therefore, the commentaries, cases, and opinions, having reference to Articles 84 and 85 of the Code Pénal of France, apply. Special commentary thereon is, nevertheless, subjoined.—(Commentario del codice penale, T. Ferrarotti, Vol. I, pp. 261, 262.)

[341] **Codice degli ex stati Extensi—Art.* 169, *n.* 6, *Veggasene il testo sotto l'art.* 169 *precedente.*

Occorendo decidere quali atti abbiano a ritenersi siccome capaci ad esporre i regnicoli a subire rappresaglie? Consultinsi *Carnot*, Comm. sull' art. 85, n. 2.—*Haus*, Osseri, Sul. prog. Belg., t. 11, p. 23.—*Dalloz*, t. XXVII, p. 7.—*Rauter*, Tratt. di drit. crim., § 287.—*Chauveau et Hélié*, t. 1, n. 1062, ediz. Brux.

Il fatto d'aver tentato di allontanare militari nazionali dalle loro bandiere per farli passare in paese straniaro, constituisce il crimine di reclutamento all' estero, ancorchè lo stato non abbia nemici all' estero nè ribelli all' interno, e sia in pace con tutte le altre protenze. Cass. Franc., 2 april, 1831.—*Sir.*, t. XXXI, parte 1, p. 377—13 febbraio, 1823.—*Morin e Sabire*, l. c.—*Carnot*, art. 92, n. 6.

Sulla questione se lo scopo di questo articulo, sia di punire ogni armamento illegale, ovvero soltanto e più verosimilmente la leva illegittima di truppe armate, l'armamento illegale di soldate destinati nell' intenzione dell' a gente ad attacare i poteri dello stato?—Vedi nel primo senso *Cass. franc.* 13 *febbraio*, 1823, *riferita da Carnot sull' art.* 92, n. 6.—Contra nel secondo senso e più rettamente, secondo noi: *Chauveau* [342] **et Hélié*, t. 1, n. 1179, ed. Brux. Quindi sembra inquesto ultimo senso necessario che logetto dell' arruolamento sia determinato nelle quistioni sottoposte ai guirate.

Carnot sull' art. 92, n. 1e; *Sebire e Carteret*, Encicl. del drit.—Attentate politici, t. 11, p. 217, opinano che la parole—*senza l'autorizzazione del governo del re*—espresse in questo articulo, non debonno intendersi in une senso troppo assoluto. Che perciò l'argente, il quale sata proceduto ad una leva di nomini senza l'autorizzazione del potee, sava non dimeno scusabile se avra agito per ordine dei suoi supèriori nell' ordine gerachico, e tale arruolamento sia stato un atto della sue funzioni. Ciò posto, *Morin*, *diz.*—Usurpazione di autorita—sogguinge che la questione di sapere se tale ordine od autorizzazione siano stati legittimamente ossia regolarmente dati, debb' essere posta, spettando all' accusato di fornirne la prova ed ai guirati di apprezzarla.

[343] *[Translation.]

Statute of the ancient States of Este, Art. 169, *No.* 6.—*See the text under Art.* 169, *above mentioned.*

The question being to decide what acts are to be considered as being liable to expose the subjects of the kingdom to reprisals. Consult *Carnot*, Comment. on art. 85, No. 2.—*Haus*, Observ. on Belgian Proj., vol ii, p. 23.—*Dallozo*, vol. xxvii, p. 7.—*Rauter*, Treatise on Criminal Right, sec. 267.—Chauveau and Hélié, vol. i, No. 1062, Edit. of Brussels.

The fact of having attempted to entice away national soldiers and to take them away to a foreign country, constitutes the crime of recruiting abroad, though the State be not at war with any foreign nation, not contending with any rebels in the country, and be at peace with all other powers. (French Court of Cass., April 2, 1831—Sir, vol. xxxi, part 1, p. 377, February 13, 1823.—Morin and Sebire, l. c,—Carnot, art. 92, No. 6.)

On the question as to the bearing of said article, whether it be intended to punish all unlawful armament, or only and more likely the illegitimate levying of troops and unlawful armament of soldiers intended to attack the authority of the State, see. in the first sense, French Court of Cassation, February 13, 1823, quoted by Caznot, [344] *on art. 92, No. 6; against the second sense, and more rightly, as it appears to us, Chauveau and Hélié, vol. 1, No. 1179. Bruss. ed. In this latter sense, it seems necessary that the object of the enlistment be determined in the questions presented to the consideration of the jury.

Carnot on art. 92, No. 1, and Sebire and Carteret Encyclopedia of Law, Political Offenses, vol. ii, p. 217, deem that the words "without the authorization of the government of the king" in this article, are not to be understood in a too absolute sense; therefore, that the agent who shall have proceeded to levy men without the authorization of the government shall nevertheless be excusable if he shall have acted in conformance with the directions of his hierarchical superiors, and if such enlistment shall have been part of his ordinary functions.

On these premises, Morin, Usurpation of Authority, contends moreover that the question, whether such directions or such authorization be legitimately or regularly given, is to be presented to the consideration of the jury, and that the defendant is expected to give the proof thereof, and the jury is to decide on the value of said proof.

[347] *III.—PORTUGAL.

No. 1. Code and Commentary.
No. 2. Efforts to Preserve the Neutrality of the Azores and Madeira.
No. 3. Limitations of Asylum to the Florida at Funchal.
No. 4. Case of the "Stonewall."

[348] *NO. 1.—CODE AND COMMENTARY.

Theoria do direito penal, applicada as codigo penal portuguez, comparado com o codigo do Brazil, leis patrias, codigos e leis criminaes dos povos antigos e modernos. Offerecida a S. M. I. O. SR. D. Pedro II.—Imperador no Brazil per F. A. F. Da Silva Ferrão. Vol. IV. (*Lisboa,* 1857,) *pp.* 181, 231.

Artigo 148º.—Todo o portuguez que, por quaesquer actos não auctorisados pelo governo, expozer o estado a uma declaração de guerra ou expozer os portuguezes a represalias da parte de uma potencia estrangeira, será condemnado, se a guerra ou as represalias se seguirem, a degredo temporario; e, se a guerra ou as represalias se não seguirem, a prisão correctional desde um a tres annos. Salva a pena maior em que possa ter incorrido seo facto praticado for crime punido pela lei com pena mais grave. (Art. 29º, Nº 4º e ref.; art. 30º Nº. 4º. e ref.; Cart., Const., art. 9º, § 2º.

[349] *Concordam com a litra e disposição d'este art. o cod. Fr., art. 84 e 85, Hesp., art 148, do Brazil, art. 73, das Duas Sicilias, art. 117 e 118, da Sardenha, art. 179 e 180, e o nosso de 1837, art. 113.

Com a differença de que o Cod. Fr. e os das Duas Sicilias e Sardenha, que o imitaram, distintinguiram a incriminação para tratar d'ella separadamente, quando resultasse comprometimento da paz, e quando sómente a provocação a represalias.

O Cod. do Brazil, o nosso de 1837 e o Hesp. fizeram de ambos os casos uma só incriminação. Este nosso art. assim o praticou tambem.

Mas sem rasão sufficiente, e considerâmos preferivel a apreciação feita pelo Cod. Fr. e seus imitadores. Se e necessaria, nos termos d'este art., para constituir a criminalidade, a eventualidade do mal resultante de um facto material, a gravidade da pena deve ser medida sobrea gravidade das consequencias d'esse facto.

Ora se as consequencias são maiores no caso da eventualidade da guerra que no das represalias, quando não sejam *geraes e continuas* a incriminação devia dividir-se para dar logar a discriminar a pena, attenuando-se na segunda hypothese.

[350] *Outra differença notavel existe no Cod. Fr., art. 84, quanto ao facto material. Não basta que esse facto não seja auctorisado pelo governo, é preciso tambem que seja *hostil* de sua natureza "*par des actions hostiles.*"

Os Cod. da Sardenha e das Duas Sicilias conservaram para o caso a mesma expressão, e o ultimo lhe acrescentou a hypothese de o facto ser tal que a lei o qualificasse crime "*par quelque crime ou par des actes hostiles.*"

Assim a lei, quando se tratasse de avaliar se o facto era ou não *hostil* não definia quaes eram os que deviam ou não tomar esse caracter, mas ficava então ao arbitrio dos juizes o pronunciar a tal respeito, absolvendo os réus sempre que se tratasse de acções illicitas so pelo fundamento *negativo* de nao ser o facto auctorisado pelo governo, fundamento inadmissivel por inconstitucional; porque a auctorisação do governo só é necessaria quando se exige não vagamente, mas para certos e determinados actos, e a lei tolera, permitte, tudo quanto não prohibe.

O Cod. Hesp., não conservou a expressão "*hostis*" do Cod. Fr. mas
corrigiu a do mesmo Cod., pondo em logar da expressão "*non approuvés*
par le gouvernement" a de "no autorizados competentemente,"
[351] e assim não *requer auctorisação do governo quando o facto se
achar auctorisado pela lei, que dispensa toda e qualquer outra
auctorisação, e para o caso dispensava o emprego da expressão "*hostis*"
assim como abrangia as duas idéas do Cod. das Duas Sicilias "*crimes*
ou *hostis*."

O Cod. do Brazil ainda é mais explicito que todos estes Cod., como se vê das palavras que julgâmos dignas de aqui transcrever na sua integra:

> "Commetter sem ordem ou auctorisação do governo *hostilidades contra os subditos de outra nação,* de maneira que se comprometta a paz ou provoquem as represalias."

Assim se fica entendendo que, se o facto em si for tal que segundo o direito internacional não podesse dar justo motivo de guerra, nunca, com quanto não auctorisado pelo governo e mesmo quando a eventualidade da guerra se seguisse, poderia ser repuitado crime. Similhante facto não é então motivo, mas mero prextexto.

Cabe nos limites da possibilidade moral evitar factos de que possam
resultar justos motivos de guerra, reconhecidos geralmente por taes;
não é dado porém á prudencia humana prevenir até os pretextos.
[352] *A incriminação, tal como se acha feita n'este art., não seguiu
estes modelos.

Alem de não distinguier factos de diversa gravidade, caindo a esse respeito no defeito do Cod. Hesp., do Brazil e do nosso de 1837, comprehendendo "*quasquer actos,*" abriu a porta a processos, cuja criminalidade não tem nem póde ter verdade moral.

Por este modo e debaixo d'estes dois pontos de vista, ó art. é mais defeituoso que os do Brazil, Hespanha e de 1837, e não adoptou d'estes o que tinham de bom, não imitando, precisando ou ampliando o que e Fr. e os da Italia supracitados haviam prescripto.

Quanto á penalidade, alem do grande perigo de se poder incriminar um facto licito, resulta da confusão das duas consequencias eventuaes, diversas em gravidade, a desproporção da mesma pena em relação aos factos provocadores das *represalias.*

Este incriminação, na sua significação mais ampla, comprehende to-
das as vias de facto offensivas de um subdito ou de uma nação estrangeira,
mesmo as que se reduzem a simples injurias. Assim, a pena poderá ser
gravissima quando o facto de provocaçao for insignificante ou
[353] insignificantissimo, *e ainda quando os da represalia, tendo-se
quido, forem de consideração pouco attendivel.

Comtudo, para se reduzir tanto quanto é possivel a applicação d'este nosso art. a proporções justas, os juizes poderão encontrar, quanto á criminalidade do facto, quando avaliada pelas suas consequencias, a disposição do Cod. no art. 20, nos. 5 e 11, combinada com o art. 82, e quando se não verificarum essas consequencias ou forem sem importancia, a disposição do mesmo art. 20, no. 11, combinado com o art. 83, no. 40.

O Cod. porém é aqui previdente em parte, pois se não resalvou os casos em que ao facto material corresponda uma *pena menor*, resalvou aquelles a que deva impor-se uma *pena maior.*

Emendou assim a omissão dos Cod. Hesp. e Fr., adoptou a que se acha nos da Italia supracitados, e vitou o defeito de igual declaração do Cod. do Brazil, restricta ás offensas commettidas contra subditos brazileiros.

No Cod. da Baviera, art. 300, se incrimina o facto d'aquelle que
tenha dado não so um motivo fundado, mas ainda occasião, faci-
[354] lidade e até *pretexto* para uma nação estran*geira se collocar em
estado de guerra, mas exige essencialmente que o tenha assim praticado com esse mesmo fim "*dans une intention hostile*," o que salva completamente todo odioso que resulta do emprego da palavra *pretexto*, excepto quanto á penalidade; porque aquelle que n'uma intenção hostil pratica factos de provocação de guerra fundados, não deve ser considerado na mesmalinha de criminalidade que o que na mesma intenção só subministrou um *pretexto*.

Se a guerra se não justifica pela gravidade da provocação, a imputação moral das suas consequencias se divide e recáe sobre a naçào inimiga.

O crimè, como temos exposto em outros logares, para ser punido com justiça deve ser considerado tanto na sua *causa moral remota* como na sua *causa moral proxima*, sem abstrahir dos seus *effeitos* e da influencia que uma ou outra causa tenha para elle exercido.

Antes de concluirmos as nossas observações sobre o presente art. notaremos que se tem censurado n'elle um defeito mais de redacção que de doutrina; porque comprehendendo para a repressão, tanto a provoca-
ção productiva de *declaração de guerra* como de *represalias* parece
[355] *deixar impune a provocação a *hostilidades*, que não tomam o ca-
racter nem de *guerra declarada*, nem de ataque ou offensas individuaes a portuguezes. Esta omissão tem parecido gravissima em um Cod. Penal, principalmente em presença do art. 18° das disposições geraes, vedando ampliar a interpretação alem dos seus termos, embora exista identidade ou ainda maioria de razão.

Todavia, como as *represalias* comprehendem *todos os meios possiveis* de uma nação alcançar *reparação* do mal que recebeu, e podem ser *negativas* ou positivas, e estas *geraes* ou *especiaes*, recaindo ou sobre cousas da nação ou de individuos a ella pertencentes; na expressão *represalias* se comprehendem as *hostilidades*. Alem d'isso na declaração de guerra, expressão de que serve o art., se comprehende como equivalente a *declaração de hostilidades*, á qual póde preceder o *embargo* ou *arresto*, que se relaxa obtida a reparação, mas que entra essencialmente na expréssão *represalias*.

O verdadeiro defeito de redacção que notamos é o que faz suppor no presente art. como impossivel uma guerra sem declaração previa. Assim é recebido como principio entre as nações antigas e modernas, mas
na pratica, sem represalias nem declaração alguma previa solemne
[356] *se tem visto, e è portanto possivel começar a guerra de facto,
quanto a nação offendida ou aggressora tem por inconveniente prevenir e avisur a nação offensora ou aggredida.

Assima expressão do art. *a uma declaração de guerra* "devia ser emendada pela expressão" a uma guerra "aucune déclaration ou autre avis à l'ennemi de l'existence de la guerre est nécessaire pour légaliser les hostilités." (Wheaton, Droit intern., tom. 1°, p. 279.) Quando porém não precede a guerra a declaração é o mesmo facto da guerra que dispensa e prejudica ou antes exprime a declaração; e assim deve entender-se o presente art.

Com mais fundamento deve notar-se que nas palavras de que lançou mão o legislador "*todo o portuguez*" imitação do Cod. Fr. "*tout français*"—parece a char-se um argumento concludente da comprehensão dos ministros d'estado; mas que este argumento perde grande parte da sua força, em vista dos art. 146°, 147°, e 148° aonde as mesmas palavras, "*todo o portuguez*," são tomadas como entidade distincta da entidade *governo*, e portanto distincta dos individuos que o compõem.

Parece resultar da redacção especial d'este art. que sómente poderão ser culpados os ministros d'estado pelos crimes previstos no. art. 146°, e 148°, quando *auctorisarem* os factos geralmente puniveis contra "*todo o portuguez*" auctor principal e directo, se a auctorisação, considerada como ordem, conselho ou provocação *fôr causa determinante* ou uma das causas determinantes do mesmo facto, qualificados então os ministros d'estado como participantes, co-auctores ou cumplices, segundo o
grau de influencia que tiveram e pelas regras geraes dos art. 25°,
[358] e 26°. *Isto porem accusa a deficiencia e incoherencia do Cod. com
relação aos ministros d'estado. Se estès se consideram participantes em igual grau, o facto em relação a elles devia ser mais severamente reprimido do que a respeito dos outros co-réus, porque o abuso de poder e falta de lealdade não é menos um elemento aqui de aggravação que na hypothese do § un—do art. 143°.

Seria injustificavel que un Portuguez se cobrisse para desviar a pena com a auctorisação de um ministro d'estado; causa remota das hostilidades ou represalias, e o mesmo ministro ficasse irresponsavel pela concessão da mesma auctorisação em diametral repugnaucia com o art. 298°.

Demais, nos termos d'este art. 298° quanto ao délinquente directo, a auctorisação do governo para se tornar causa justificativa dos crimes que produziram resultados prejudiciaes à seguranca do estado, deve ser *obrigatoria*, isto e, tal que importe a *obediencia* correlativa ou uma *ordem*.

Se a *auctorisacão* é contra a lei fundamental do estado ou contra outras leis, ella é facultativa, e como tal não releva o que d'ella usou
delinquente, principal e o ministro pedendo sem crime deixar de a
[358] usar *maxime quando entre o de estado não houver relações
hierarchicas que façam considerar este superior, como se demonstra por argumento do No. 20, do art. 20°, et do No. 5°, do art. 14°.*

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*Teria sido conveniente que o Cod. resalvasse aquelles actos de defeza ou de provocaçao que os délégados geraes do governo, constituidos em necessidade, podem ser obrigados a practicar sen do incompativel o seu procedimento com a auctorisaçao do governo déterminadamente para esses actos.

Os nossos governadores do ultramar, mesmo de provincia e postos maritimos distantes da costa, os commandantes de corpos militares, os de navios de guerra, etc., podem sem ordem expressa do governo repellir pela força das armas um ataque, ou mesmo, para manutençao da dignidade e intéresses nacionaes tomar a iniciativa de hostilidades ou représalias. (Ortolan, Règl. inter., liv. 3°, cap 3°, princ. gén.)

"Assim em presença do que levâmos dito, as palavras do art. *Todo o portuguez*
[359] *que por quaesquer actos não auctorisados e*pelo governo expozer o estado a uma declara-*
ção de guerra" poderiam ser convenientemente emendadas dizendo-se "*todo o portuguez não auctorisado pelo governo, que por quaesquer actos hostis ou criminosos expozer o estado a uma guerra*".

A guerra mesma não é em si mais que um estado de *represalias geraes e continuas*, em quanto n'esse estado tudo o que é permittido a uma das partes belligerantes se considera licito à outra. (Schmalz, Droit des gens européens, livre 6°, cap. 1°, pag. 214.)

Isto comtudo soffre uma limitação a respeito das mesmas nações que sustentam no estado de paz um apparato bellico, tanto em terra como no mar, cujos exercitos e armadas, confundindo por sua attitude o estado preventivo com o de ameaça e aggressão permanente, compromettem a existencia ou independencia de outras nações, mais ou menos determinadamente, podendo de improviso e por ordens expedidas em segredo verificar um ataque naval ou uma invasão.

Estas palavras "declaração de guerra" não têem hoje a mesma significação que tinham
em outras eras, consistindo na *intimação* mandada fazer a uma nação em seu
[360] *mesmo territorio por um arauto d'armas ou mensageiro, precisamente como um
repto ou desafio. Esta fórma solemne cessou desde o meado do seculo 17°, e ficou substituida pelo decretamento da guerra e sua communicação official as nações aggredidas, alliadas ou neutras, accompanhada de manifestos ou exposição de motivos de justificação,

a que respondem os contra-manifestos, até que effectivamente rompem as hostilidades. Todavia auctores existem como Bynkershoek, que sustentam que nem estes manifestos são necessarios, e muitas vezes de improviso, ou de hostilidades em hostilidades se aggrava entre as nações a sua situação até à manifestação formal do estado de guerra. Guerras tem havido sem previa declaração; como foi a que rebentou entre a França e a Inglaterra em Junho de 1755, sómente declarada solemnemente em Maio de 1756; e nas negociações movidas em 1761 sobre restituição e indemnisação de presas feitas antes d'essa declaração entre acôrte de Versailles e a de Londres, sustentou esta abertamente a falta de direito à reclamação como infundada por falta de convenção especial e dependente de um principio de direito das gentes sujeito a contestação.

[361] *As surprezas porém d'este genero tomamo caracter de perfidia e aleivosia. E a guerra dos piratas e salteadores em ponto grande. Felizmente similhantes aggressões inesperadas são hoje pouco provaveis de facto porque a toda a guerra precedem symptomas e actos preparatorios que manifestam o estado de transição e constituem como uma *declaração tacita* que substitue a *solemne* ou *expressa.* O segredo absoluto não é possivel no estado actual da organisação, relações e facilidade de communicações entre as nações modernas. (Ortolan, Règl. intern., liv. 3°, cap. 1°.)

Portanto o elemento dirimente, admittido sem excepção no presente art., não póde com verdade moral ser admittido. A malicia ou imprudencia do ministro d'estado que auctorisa o acto, não destroe nem o elemento moral malefico na pessoa do auctorisado, nem a responsabilidade directa que lhe resulta do abuso que fez da sua liberdade e actividade.

Alem d'isso, assim como lembrou no § un. do art. 143° particularisar os ministros d'estado quando fossem auctores directos dos factos a que
o mesmo § se refere e em geral. no art. 193°, os funccionarios superiores que ordenassem aos seus inferiores um acto criminoso
[362] *também aqui deviam elles ser particularisados, quando simplesmente o *auctorisassem*, e que assim, dando a outrem carta, diploma ou instrucções em préjuizo de uma nação estrangeira ou de seus subditos, fossem causa da guerra ou represalias.

Um ministro d'estado em similhantes circumstancias é criminoso, ou por traição ou por imprudencia, e em todo o caso è sempre responsavel por todos os actos directos ou indirectos de provocação; 1° Quando lhe falta a justiça para aggressao; 2° Quando não lhe faltando a justiça, resulta maior mal politico e material contra a nação de recorrer a sorte das armas; 3° Quando provoca directa ou indirectamente sem ter de antemão calculado as forças da reciproca defeza e ataque.

Tanto maior é a extensão do direito politico, que sobre declaração de guerra a curta, no art. 75° § 9° concede ao poder executivo, sem dependencia de deliberação das camaras legislativas, quanto maior e mais especial deve ser a repressão legal contra os ministros d'estado, que auctorisarem pela provocação as represalias e em seu seguimento envolverem por tal forma a nação em immensos sacrificios, difficuldades e perigos.

[363] *Portanto, se o presente art. toma como circumstancia dirimente e em termos absolutos a auctorisação do governo, para a provocação à guerra ou represalias, a justiça é a politica pediam que o cod., incriminasse o facto da auctorisaçao em si mesmo, quando abusiva por malefica ou culposa contra os membros do gabinete que d'ella participassem como auctores ou cumplices.

Se os crimes que os ministros de estado podem commetter no exercicio de suas funcções têem uma natureza especial que deva ser estudada e tratada para uma lei particular, cumpria então elimina-los completamente do cod. e não os comprehender, já por determinação especial, como se fez no cit. § un, do art. 143° já como a cada passo por determinações geraes absolutas "*todo o portuguez, todo o funccionario publico*" sem resalva alguma dos mesmos ministros, o que muitas vezes, como veremos, lhes torna o cod. de irrisoria, absurda ou impossivel applicação.

[364] *Art. 156. Qualquer pessoa, que sem auctorisação do governo recrutar ou fizer recrutar, assalariar ou fizer assalariar gente para o serviço militar ou maritimo estrangeiro, ou procurar armas ou embarcações ou muniçoes para o mesmo fim, será condemnado no maximo da prisão correccional, e no maximo da multa.

§ unico, se o criminoso fôr estrangeiro, será expulso temporariamente.

Este art. parece ser tirado, quanto à redacção, do art. 22° do Cod. Pén. Fr.:

> Seront punis de mort ceux qui auront levé ou fait lever des troupes armées, engagé ou enrôlé, fait engager ou enrôler des soldats, ou leur auront fournis ou procuré des armes ou munitions sans ordre ou autorisation du gouvernement.

Pela collocação que ali tem este art. é fóra de duvida que sómente è applicavel ao caso em que se provar, que os recrutamentos tinham por fim pertubar a segurança interna do paiz. O tribunal de cassaçao de Paris, por accordão de 13 de Fevereiro de 1823, decidiu que esta prova era inutil, e que no silencio da lei se devia considerar sómente o facto material, com abstracçao do seu fim.

Mas Chauveau e Hélié, Théorie du Cod. Pén., cap. 18, demonstram que esta doutrina é inteiramente contraria á lei, e que nem o legislador podia ter a intenção de ferir com a pena de morte attentados
[365] *de outra natureza.

Tratando-se de recrutamento para um paiz estrangeiro não se poderia justificar similhante pena. Este facto não e criminoso em si mesmo, mas sómente quando ou o fim não è honesto, ou se dà violação das leis de policia de ordem ou de conveniencia publica. E o egoismo da propria conservação, deixando os partidos ou as potencias belligerantes entregues a si mesmas, quando um auxilio d'esta natureza poderia ou salva-las ou dar á guerra uma solução mais rapida e mais honrosa.

O nosso Cod. porém aproveitou a incriminação não sò applicando-a aos recrutamentos para serviço militar estrangeiro, mas tambem ampliandoa ao serviço maritimo militar e não militar converten do assim em delicto o que essencialmente não é mais, que uma simples infracção. O que é illicito moralmente, não póde tornar-se licito pela auctorisação de nenhum governo, a qual só recáe sobre factos moralmente licitos. Se a violacão consiste então sómente na preterição d'esta solemnidade, a infracção assume o caracter de contravenção mais ou menos grave, mas nunca deveria passar á categoria de crime.

No mesmo sentido, mas com uma relação directa a todo e qualquer fim, que fóra de um caso urgente não fosse para repellir o perigo imminente da patria atacada pela guerra interior ou exterior, foi adop-
[366] tada, no cod. de 1837, a incriminação do *cod. Fr. e debaixo da mesma pena de morte.

Prohibia pois tambem esse cod. implicitamente os recrutamentos ou alistamentos para o serviço estrangeiro, mas auctorisava todos os esforços individuaes desta natureza, eu caso urgente de defeza interna ou externa.

O Cod. Pen. do Brazil é omisso e não o censuramos por isso. Limitou-se a incriminar geralmente, no art. 73°, o facto de hostilidades, contra subditos de outra nação por modo tal que se comprometta a paz ou se provoquem represalias.

O Cod. Hesp. art. 142° No. 6° so puniu, debaixo de pena de ferros até ao maximo de morte, o que recrutasse em Hespanha para o serviço *das armas de uma potencia inimiga.* É porém omisso tambem na hypothese de que trata este nosso art.

Concordam porém em ambas as hypotheses, que todavia distinguem os Cod. da Sardenha, art. 181°, e o das Duas Sicilias, art 109°.

O da Sardenha, na primeira hypothese, impõe a pena temporaria de reclusão a trabalhos forçados. conforme as circumstancias, e na segunda, a de morte.

O das Duas Sicilias impõe tambem n'esta ultima hypothese a pena de morte, mas na do nosso art. a pena de exilio temporario.

[367] No moderno cod. da Baviera, art. 306°, No. 4°, se *acha uma disposição em parte e substancialmente concordante, classificada como de crime de traição no quarto grau e portanto punida com a pena de dois a oito annos de prisão:

> Celui qui enrôlera secrètement des sujets du royaume au service *d'une puissance belligérante étrangère ou qui prêtera aide et assistance à un recruteur non autorisé pour l'exécution de ses desseins.*

Nos outros cód. da Allemanha, com relação ao crime de traição, são *considerados e punidos como seus actos* preparatorios os recrutamentos assim como as compras de armas e de municoés. A mesma doutrina se acha no cod. da Prussia § 64°.

Finalmente no cod. da Austria, art. 77°, tambem se encontra concordancia com este nosso art., mas é só para remetter para a lei militar uma similhante incriminação e portanto restricta ao estado da guerra com a nação recrutante.

> Celui qui enrôle des hommes pour un service militaire étranger . . . est jugé et puni, conformément aux lois militaires, par le pouvoir militaire.

Esta observação foi feita por Cambacéres nas discussões do conselho de estado sobre o Cod. Pén. Fr. Foilhe porém respondido por M. Berlier, que da inserção no cod. não resultava inconveniente. Mas então redargue o cit. Chauveau et Hélié, essa incriminação ficou sem utili-
[368] dade; porque desde que se reconrece que *os factos previstos no
art. são factos militares, não se ve motivo algum fundado que justifique uma excepção para que esta disposicão tome logar entre as de dereito criminal commun. É uma derogação á ordem das materias que o cod. se propoz seguir.

Todavia, se não forem militares os culpados do crime previsto n'este nosso art., não poderão ser julgados pelos nossos tribunaes militares em vista do que dispõe este nosso cod. no art. 16°.

Quanto à penalidade, reconhecemos que ella e appropriada aos delictos de que se trata n'este art. tanto pelo que respeita á de prisão correccional, como à de multa. È um dos poucos casos em que a pena pecuniaria tem logar sem vicio de confisco. Sem meios pecuniarios não se recruta, não se assoldada, não se assalaria nem se faz assalariar. O dinheiro e aqui o movel principal, o instrumento do delicto. A maneira indirecta de o sequestrar é em harmonia com o art. 81° do cod., certamente uma multa e forte.

Todavia o attentado póde ser mais ou menos grave, as circumstancias de que se ache revestido desculpar ou não, e mais ou menos a intenção do seu auctor. Recrutar em pais estrangeiro para levantar o grito da liberdade, da independencia ou da legitimidade, e um procedimento que excita as sympathias de um publico illustrado, e de todos os homens que detestam a tyrannia, a injustiça, a usurpação. Recrutar para restorar o absolutismo, adjudar uma conquista, restabelecer a inquisição, destruir a propriedade ou o credito de uma nação, é um attendado que excita horror, que detestam todos os que prezam a ordem, a paz e a felicidade do genero humano.

Pois que? deve incriminar-se o soccorro por tal meio a uma nação que lute com forças desiguaes para manter a sua independencia ou a sua liberdade ou a legitimidade de um principe?

Posto isto, a penalidade comminada sempre no seu maximo se torna viciosa, por isso que assim se torna indivisivel. Necessariamente da logar a punir-se com demasiado rigor, tanto a contravenção que tinha um fim nobre e generoso, como a que tinha um fim ignoble e abominavel. Alem disso, um recrutamento ou alistamento paro o serviço maritimo não é em si mesmo tão importante, como para o serviço militar ou naval de uma nação estrangeira. A liberdade de commercio reciproco, que tanto convem e se deve favorecer entre as nações, desculpa sempre a violação de uma formalidade de auctorisação.

Em especulações mercantis, com dependencia de viagens de mar, um dia, uma hora de tardança póde malograr um bom negocio, tornar ruinosa ou inutilisar uma operação de commercio que aliás seria excel-
[370] lente se fosse conduzida a tempo. O *segredo mesmo, que é
muitas vezes preciso guardar, o segredo que é a alma é a vida de similhantes emprezas, repugna a que se tornem sensiveis pela demora dos actos preparatorios, para a qual concorreria forçosamente a necessidade de uma auctorisação do governo em casos taes.*

Assim, ainda por esta consideração se aggrava o vicio da penalidade. Não só vem a ser punidos com a mesma pena factos diversos em gravidade pela intenção, mas factos diversos em gravidade por sua mesma natureza.

Esta incriminação tem o seu fundamento nas doutrinas de Wolfio e de Vattel, invocadas pelo governo americano en 1793, no começo da guerra europea e incorporadas em uma lei do congresso publicada em 1794 revista e restabelecida em 1818.

Por esta lei è um delicto não só augmentar a força de um *navio de guerra* de paiz não inimigo, preparar uma expedição militar contra esse paiz, como tambem assalariar ou recrutar para um serviçó estrangeiro de terra ou de mar.

Este exemplo da America foi bem depressa seguido pela Gran-Bretanha no acto do parlamento, 59° Geo. III, cap. 59°, intitulado, "Acto para impedir o alistamento ou recrutamento" dos subditos de S. M. para ser-

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* O Sr. Levry entende, que este art. se deve entender do serviço *de guerra;* e toma por fundamento que o contrario seria um absurdo de tal ordem que não è possivel suppòr que o legislador o quizesse sanccioner. Porém, salvo o respeito e merecido louvor que tributamos ao joven jurisconsulto, não vemos *nas palavras* nem no contexto do art. razão concludente para restringir a sua disposição. Embora ella seja uma aberração de tudo quanto se acha legislado em outros cod. a similhante respeito, como sómente aqui se incrimina uma contravenção, co legislador podia ter em vista a necessidade de marinhagem tanto para os nossos navios de guerra, como mercantes nacionaes, não reputamos a disposição tão absurda como parece à primeira vista. Alem de que o re-
[371] crutamento de marinhagem mercante quando nacional *não prejudica o recruta-
mente d'ella para o serviço da armada, antes e para ella um viveiro util, em quanto que o recrutamento da marinhagem para a marinha mercante estrangeira 6 um meio de a subtrahir ao serviço nacional. È tanto mais isto assim procede, em vista do regulamento de 30 de Agosto de 1839, ordenando no art. 13° do cap. 3° que os navios mercantes sejam escrupulosamente visitados para que não *levem marinhciros portuguees sem permizão*, e que, no caso de se encontrarem, o capitão do porto os entregue logo em custodia ao encarregado de policia, a fim de na primeira occasiãe os remetter para o arsenal da marinha, para serem embarcados nos navios da corôa, e encarregando, em art. addicional, o mesmo capitão de fazer todas as diligencias possiveis para ter sempre um mappa de todos os marinheiros, *com declaração do numero com que se póde contar para o serviço da armada.*

Assim a comprehenção do serviço maritimo estrangeiro, com quanto não militar, *mas em geral maritimo*, póde sem o figurado absurdo considerar-se existir nas palavras
"*serviço militar ou maritimo estrangeiro*" principalmente porque por este modo
[372] fica a *falta de auctorisação* incriminada *aqui em relação ao *recrutante*, como fora
nos. §§ 1° e 2° antecedentes a respeito dos recrutados ou acatantes, com designacão expressa dos navios *mercantes*.

Em todo o caso raconhecemos que a redecção não é boa, mas temos por melhor criticar a lei, para que se reforme, que lançar mão do ultimo dos recursos, o argumento por absurdo, para que a sua disposição litteral se neutralise. Dura lex, sed lex.

viço estrangeiro ou o armamento e equipamento nos dominios de
[373] S. M. n'uma intenção de *guerra sem permissão de S. M.

A razão fundamental em que se firmam Vattel e Wolfio para condemnar os recrutamentos sem auctorisação do governo, é que estes são uma prerogativa exclusiva da soberania que ninguem, sem permissão expressa, pode legitimamente exercer em territorio de outro estado.

Mas todas as prerogativas da soberania têem os seus justos limites e termos, não vão a mais nem a menos do que é preciso para se consequir o fim social. Se o recrutamento não prejudica o serviço militar nem substrahe os recrutados ao tributo, dito de sangue, para com o seu paiz, em que se offende a prerogativa?

No acto constitucional federativo da Allemanha, assignado em Vienna em 8 de Junho de 1815, e concedido no. art. 18⁰ aos subditos dos estados confederados "entrar no serviço civil ou militar de qualquer d'esses estados, comtanto porem, que o exercicio d'esse direito não prejudique a obrigação do serviço militar que lhes impõe a sua patria."

Os Americanos acrescentavam, invocando em favor da sua neutralidade absoluta, os principios de direito natural, que assim como um homem se devia julgar em paz com outro homem, em quanto este o não aggredia, o mesmo se devia dizer de nação a nação.
[374] *Mas esta argumentação tambem não colhe, porque se colhesse para o caso, ficava sendo falso o direito natural que não só não incrimina tanto a defeza pessoal, como a de outra pessoa; principio adoptado n'este nosso Cod. art. 14°, No. 3 e outros art. concordantes; mas muito pelo contrario condemna como immoral o facto d'aquelle que presencia de braços cruzados a luta de um com outro homem e a morte ou ferimentos graves de um d'elles sem lhe acudir podendo.

Nada d'isto porem póde ter applicação ao serviço maritimo mercante em tempo de paz, em que não é de presumir a simulação o fraude em favor da guerra. Em conclusão pois esta incriminação comprehende factos de diversa gravidade e natureza que converia discriminar e punir diversamente segundo a qualidade do delicto, como era de justiça, a que resiste a disposição penal do art. em razão do maximo em que para todos é fixada.

Quanto a modificação que se encontra no § un. consideramos adequada està solução do legislador. Quando o recrutante é um estrangeiro, e sem vistas algumas hostis contra nós, a expulsão do reino é o procedimento que mais convem.

E não tem aqui esta penalidade o defeito das antecedentes, porque sendo imposta a temporaria, sem algum outra declaraçao, devem os estrangeiros ser expulsos por tempo que não excedendo o maximo de doze annos, póde segundo as circumstâncias, reduzir-se até tres annos, conforme o art. 36°.

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[375] *[Translation.]

CODE AND COMMENTARIES.

Theory of international right, applied to the Portuguese penal statute, compared with the Brazilian statute, the national laws, the statutes and criminal laws of ancient and modern nations, presented to His Imperial Majesty Dom Pedro II, Emperor of Brazil, by F. A. F. Da Silva Ferrão. Vol. IV, (Lisbon, 1857,*) pp.* 181, 231.

Article 148. If any Portuguese subject shall, by any acts whatsoever not authorized by the government, expose the state to a declaration of war, or expose Portuguese subjects to reprisals from any foreign power, said offender shall be condemned to temporary ban-

ishment, if such war or such reprisals be carried into effect; and if such war or such reprisals be not carried into effect, he shall be condemned to correctional imprisonment for a term not to be less than one year and not to exceed three years, without excepting any further punishment which said offender may incur, if the acts he has committed be a crime punished more severely by law. (Art. 29, No. 4, &c.; Art. 30, No. 4, &c.; Constitutional Charter, Art. 9, § 2.)

The letter and provisions of this article concur with articles 84 [376] and 85 of the French statute; with article 148 *of the Spanish statute; with article 73 of the Brazilian statute; with articles 117 and 118 of the statute of the Two Sicilies; with articles 179 and 180 of the Sardinian statute; and with article 113 of our statute of 1837. But they differ in one point from the French statute, and from those of the Two Sicilies and of Sardinia which have been copied thereon. Said statutes make a difference in the indictment when peace has been actually endangered, and when there has only been a provocation to reprisals.

The Brazilian statute, ours of 1837, and the Spanish statute, have considered both cases as being one single offense. The provisions of the above-mentioned article are to the same effect. But we do not think that there be sufficient reasons for such provisions, and we consider that the French statute, and those which have been copied thereon, have taken a more proper view of the question. If, under the provisions of said article, a material fact cannot assume a criminal character unless it be eventually followed by evil results, the severity of punishment is to be measured on the gravity of the consequences of said facts.

Now, if such consequences are of a more serious character in the event of war than in that of reprisals, when not general nor continued, [377] it was necessary that there should be a difference in the *indictment, in order that there be also a difference in the punishment, which is not to be so severe in the latter case.

There is another considerable difference in the French statute, article 84, as regards the material fact. It is not sufficient that such fact be not authorized by the government; it is necessary, moreover, that it be in itself of an hostile character, (par des actions hostiles.)

The statutes of Sardinia and of the Two Sicilies have employed the same words, and the latter requires, further, that the fact be such as to be qualified a crime by law, (par quelque crime ou par des actes hostiles.)

When the question was to explain whether an act was hostile or not, the law did not determine those which were to assume that character and those which were not, but left them to the discretion of the judges to decide upon that question, acquitting the defendants whenever the case was that of acts being illicit only for that negative reason that the act was not authorized by the government, a reason which cannot be admitted as being contrary to the constitution; in fact, the authorization of government is only necessary when claimed for certain and determined acts, and not in an undetermined manner, and the law tolerates and permits whatever it does not prohibit.

The Spanish statute did not keep the term of the French stat- [378] ute, (hostile,) but instead of the words "non-approuvés *par le gouvernement," it says "no autorizados competentemente," (not permitted by competent authority,) and thus it does not require the authorization of the government when the fact is authorized by law, which dispenses with any other authorization; and in the present case it was not necessary for said statute to use the word "hostile," and it involves also the two ideas (crimes ou hostiles) of the statute of the Two Sicilies.

The Brazilian statute is still more explicit than all the above-mentioned ones, as will be seen by the following words, which we think it incumbent on us to quote all at length: "Commit without the order or authorization of government hostile acts against the subjects of another nation, such as to endanger peace or provoke reprisals."

Thus it remains understood that, if the fact in itself were not such as to give just reason for war according to international right, it could never be reputed a crime, even were it not authorized by the government, and were it eventually followed by war. Such a fact is not then a reason, but a mere pretext for war.

It is within the limits of moral possibility to avoid all acts from which might arise just reasons for war, generally acknowledged as such; but it is not within the reach of human prudence to provide against pretexts.

[379] The crimination under said article did not assume the *same form. Not only did it not make any difference between facts of different gravity, falling thereby into the same error as the Spanish statute, the Brazilian statute, and our own statute of 1837, but in involving "any cases whatsoever" it has still been the grounds for lawsuits, the criminality of which has not and cannot have any moral truth.

Thus, and considered under these two points of view, the article is more defective than those of Brazil, Spain, and our own of 1837, and it has not adopted what was proper in them, neither has it imitated, nor clearly pointed out, nor amplified the prescriptions of the French and Italian statutes above mentioned.

As regards the penalty, in addition to the great danger of a lawful act being possibly incriminated, the confusion of the two eventual consequences, different in gravity, is the cause of the same punishment not being proportionate to the facts which have provoked the reprisals.

This crimination, in its widest acceptation, involves any offense whatsoever against a foreign subject or foreign nation, even were it but a mere insult. Thus the punishment might be very severe though the provocation were unimportant, and though the reprisals arising therefrom were of little consequence.

Nevertheless, in order to reduce as much as possible the ap-[380]plication of our said article to *right proportions, as regards the criminality of the fact, according to its consequences, the judges will be able to avail themselves of the provisions of the statute, article 20, Nos. 3 and 11, combined with article 82; and when such consequences do not follow, or shall be of no importance, of the provisions of article 20, No. 11, combined with article 83, No. 4.

But the statute here is partly provident, because, if it has not decided on the cases when a slight punishment corresponds to a material act, it has decided on those when the punishment is to be severe. It has thus corrected the omission of the French and Spanish statutes, it has adopted the provisions of the above-mentioned Italian statutes, and avoided the defect of a similar declaration in the Brazilian statute restrained to offenses committed against Brazilian subjects.

The Bavarian statute, article 300, incriminates the act of the party who has given not only a just reason, but even an occasion, a facility, or only a pretext for a foreign nation placing itself in a state of war, but it requires essentially that the proceedings of such party be actually to that purpose, (dans une intention hostile,) waiving thus the obnoxious character of the word "pretext," excepting with regard to penalty, because the party who, with a hostile intention, commits such acts as to provoke rightly a war, must not be placed on the same line of criminality as the party who, with the same intention, has only given a pretext for war.

If the war be not justified by the gravity of the provocation, its consequences are to be morally imputed to the adverse nation.

[381] *As we have already remarked, it is necessary, in order to punish rightly a crime, to consider not only its remote moral cause, but also its immediate moral cause, taking into account its effects and the influence of both causes.

Before concluding our observations on the present article, we shall observe that our criticism bears more on the words than on the doctrine of said article; because, though it involves in punishment the provocation from which arises a declaration of war, as well as that which is the cause of reprisals, it seems to leave unpunished the provocation to hostile acts, which do not assume the character of a declared war, nor that of an attack or individual offense against Portuguese subjects. This omission has appeared to be a very serious one in a penal statute, especially in presence of article 18 of the general provisions which forbid to amplify its construction beyond its terms, though the reason for punishment be identical or even greater.

However, as the reprisals involve all possible means for a nation to obtain satisfaction of the offense it may have suffered, as they may be negative or positive, and these may be general or special, against the property of the nation, or that of its individual subjects, the word "reprisals" involves the idea of hostile acts. Moreover, the words [382] "declaration of war" in the article are to be *considered as equivalent to the declaration of hostilities, which may be preceded by the seizure or arrest, which may be withdrawn when satisfaction is obtained, but are essentially involved in the expression "reprisals."

But the real fault we find in the wording of said article is that it leads to suppose that a war cannot possibly break out without being previously declared. Such is indeed the principle acknowledged by ancient and modern nations; but in practice it has been seen and it can happen that war does begin in fact without any reprisals or any previous solemn declaration, whether the offended nation be aggressor or attacked.

Thus, the words of the article "to a declaration of war" ought to be corrected by the words "to a war." ("Aucune déclaration ni autre avis à l'ennemi de l'existence de la guerre n'est nécessaire pour légaliser les hostilités.") (Wheaton, Droit international, tome i, p. 279.) When, then, the war is not preceded by a declaration, it is the fact of war itself that dispenses with, and prejudges or rather expresses the declaration; and it is in such way that the present article is to be understood.

There are more grounds to observe that in the words used by the legislator, "any Portuguese subject," which are an imitation o [383] the words "tout Français" *in the French statute, there seems to be a conclusive argument for involving therein the ministers o the state; but that this argument loses a great deal of its power in consequence of articles 146, 147 and 148, in which the same words, "any Portuguese subjects," are employed as an entity different from the entity "government," and therefore different from the persons who are part thereof.

It appears to result from the especial wording of this article, that the ministers of the state can only be indicted for the crimes under articles 746 and 748, when they have authorized the facts for which "any Portuguese subject" is generally liable to punishment, as direct and principa author thereof, if said authorization, considered as an order, an advice, or a provocation, has been the principal cause or one of the principal causes of said fact, the ministers of the state being then considered as parties, co-authors, or accomplices to such fact, on account of their great influence and in conformity with the general rules of articles 25 and 26.

But this shows the deficiency and incoherency of the statute as regards the ministers of the state. If they be considered as parties to the offense in a similar degree, they ought to be punished more severely for the same fact than their co-defendants, because the abuse of [384] their power and the want *of loyalty on their part is as well an aggravating element as in the case of section 1 of article 143.

It would be unjustifiable that any Portuguese subject could escape punishment in covering himself with the authority of the minister of state, who is the remote cause of hostilities and reprisals, and that said minister should be allowed to remain unresponsible for having given such authority in direct opposition with article 298.

Moreover, under this article 298, with regard to the direct offender, the authorization of the government, in order to be considered as a justificative cause of the crimes from which have arisen such results as will endanger the safety of the state, must be of an obligatory character—that is, such as will involve correlative obedience or an order.

If the authorization be contrary to the fundamental law of the state, or to any other law, it is optional, and as such it is not an excuse for the person who has made use thereof, and who might have not done so without a crime, especially if there be no hierarchical connection between the principal offender and the minister of the state, such as the latter be considered as a superior, as is demonstrated by the argument of No. 26 of article 20, and of No. 5 of article 14.[1]

Therefore, the absolute element admitted without exception by the present article cannot be admitted with moral truth. The ill-will or imprudence of a minister of the state who authorizes an act does not destroy the mischievous moral element in the person so authorized nor the direct responsibility which arises from the abuse of his liberty and activity.

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[385] *[1] It would have been convenient that the statute had excepted those acts of defense or provocation which the general delegates of the government may, in case of necessity, be obliged to commit, though not competent to do so, nor being previously authorized for that special purpose.

The governor of our dominions abroad, even of our provinces and naval stations distant from the coast, the commanders of military bodies, of men-of-war, &c., can, without any express order from the government, repel by force of arms any attack, or even, in order to maintain the national dignity and interests, take the initiative of hostilities or reprisals.—(Ortolan, Règles internationales, liv. 3, cap. 3. Prin. gen.)

Thus, in accordance with what we have said, the words of the article, "Any Portuguese subject who shall, by any act whatsoever, not authorized by the government, expose the state to a declaration of war," might be conveniently corrected as follows: "Any Portuguese subject not authorized by the government, who shall, by any hostile or criminal acts whatsoever, expose the state to a war."

A war itself is nothing more than a state of general and continued reprisals, [386] in so much as what is allowed to one of the belligerent par*ties is considered as licit to the other.—(Schalmz, Droit des gens europ., liv. 6, cap. 1, p. 214.)

Nevertheless, there is a limit to the principle as regards those nations which keep up, in time of peace, a warlike apparatus on land and on sea; and whose armies and fleets, confounding by their attitude the preventive state with that of permanent threat and aggression, endanger the existence or independence of other nations, in a more or less precise manner, on account of their being able, at any time, by sudden orders and secretly forwarded, to carry into effect a naval attack or an invasion.

The words, "declaration of war," have no more the same sense they used to have in former times, when such declaration was an intimation made to a nation on its own territory, through a herald-at-arms, or a messenger, as if it were a challenge. The solemn form ceased to be practiced about the middle of the seventeenth century,

Moreover, in the same manner as section 1 of article 143 points out to the ministers of the state when they are direct authors of facts to which same section refers, and as article 198 points generally to all superior functionaries, who have ordered any criminal act too their subordinates, in the same manner ought they to be pointed out too when they have merely authorized such facts, and been thus the cause of war and reprisals, by giving to another person a letter, a diploma, or
[389] instructions such as *to be prejudicial to a foreign nation, or to its subjects.

In such circumstances, a minister of the state is criminal either by treason or by imprudence, and he is always responsible for all direct or indirect acts of provocation: first, if his aggression be not justified; secondly, if, though it be justified, there arises for the nation a greater political and material injury on account of its having resorted to arms; thirdly, if he provokes in a direct or indirect manner without having previously calculated the respective forces of both parties for attack and defense.

So much the greater is the extent of the political right, as regards the declaration of war, given under article 75, section 9, of the charter, to the executive power, who is not restrained to discussion on that point in the legislative chambers; so much the greater also and more especial must be the legal penalty inflicted upon the ministers of the state who give rise, by provocations, to reprisals against the country, and, in consequence thereof, involve the nation in enormous sacrifices, difficulties, and dangers.

Moreover, if the present article considers as an absolute impediment the authorization of the government for a provocation to war or reprisals, both justice and policy require that the statute should criminate the fact of the authorization in itself, when it is abusive or criminal, on the members of the cabinet, who have taken part in it as authors or accomplices.

[390] If the crimes which may be committed by the ministers *of the state in their official functions be of an especial character, which is to be dealt with by a particular law, it would have been convenient for the statute not to provide in any manner against them, nor to mention them, neither in an especial manner, as in the above-quoted section 1 of article 143, nor in a general and absolute manner, as it happens at every instant, (any Portuguese subject, any public functionary,) with-

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[387] when, in place thereof, appear*ed the decrees for war, official notice of which is given all nations, whether foes, allies, or neutrals, and is accompanied with manifests or exposition of justificative motives, in answer to which counter manifests are also issued until the hostilities actually break out. However, certain authors, such as Bynkershoek, contend that these manifests are not necessary, and it often happens that the respective situation of two nations is either suddenly, or from hostile acts to hostile acts, brought to the actual manifestation of war. Wars have taken place without any previous declaration; such was the war between France and England which burst out in June, 1755, and was only solemnly declared in May, 1756; and in the negotiations which took place in 1761, between the courts of Versailles and London, with regard to restitution and compensation for the prizes captured previous to said declaration, the latter court contended that such claim was groundless for want of a special convention, and as being dependent upon a point of the law of nations liable to contestation.

[388] * But such surprises assume a perfidious and treacherous character. It is the war of pirates and highwaymen practiced on the high seas. Happily such sudden aggressions are nowadays very improbable, in fact every war being preceded by certain symptoms and preparatory acts indicative of a state of transition, and constitute, as it were, an implied declaration, which takes the place of a solemn and explicit one. An absolute secret is not possible in the present state of organization, relations, and easy intercourse between modern nations.—(Ortolan, Règl. intern., liv. 3, cap. 1.)

out any defeasance whatsoever for said ministers, against whom, as we shall see in a great many places, the statute provides in a manner irrisory, absurd, and of impossible application.

ARTICLE 156. Any person who, without the authorization of the government, shall recruit or procure to be recruited, hire or procure to be hired, men for a foreign military or naval service, or shall procure arms, or ships, or munitions for the same purpose, shall be condemned to the maximum of correctional imprisonment and to the maximum of time.

ONLY SECTION. If the offender be a foreigner, he shall be temporarily expelled from the country.

This article appears, with respect to its wording, to have been copied from the article 22 of the French penal statute:

> Seront punis de mort ceux qui auront levé ou fait lever des troupes armées, engagé ou enrôlé, fait engager ou enrôler des soldats, ou leur auront fourni des armes [391] ou munitions sans ordre ou autorisation du *gouvernement."

By the construction of that article it is not doubtful that it can only be enforced in cases where it may be proved that such recruiting had for object to disturb the internal safety of the country. The court of cassation at Paris, in its proceedings of the 13th of February, has decided that such proof was not required, and that the law being silent, the material fact alone was to be considered, excluding entirely its object.

But Chauveau and Hélié (Théorie du Code Pénal, cap. 18,) show that this doctrine is altogether contrary to the law, and that the legislator cannot have intended to inflict capital punishment for offenses of other character.

Such a penalty could not be justified as concerning enlistments for a foreign country. This fact is not criminal in itself, but only when the object is not honest, or when it infringes the municipal laws, or laws of police, or of public convenience. It is the selfishness of proper conservation, leaving the contending parties or belligerent powers to themselves, when a succor of that kind might save them, or bring the war to a sooner and more honorable conclusion.

Our statute has taken that crimination and applied it not only to enlistments for foreign military service, but also to naval and military [392] *service itself. It has declared an offense that which is essentially of a character that no government whatsoever can make licit, for the government's authorization can only be granted to that which is morally licit. But if the violation of the law consists only in neglecting that *formalité*, the infringement assumes the character of a delinquency of more or less importance, but can never assume that of a crime.

The crimination of the French statute, with the same provision for capital punishment, was adopted by our statute of 1837, with the same meaning, but with direct connection to any object whatsoever, excepting the case of urgent necessity for repelling an imminent danger of the country attacked by war abroad or on its territory.

The same statute implicitly prohibited any recruiting or enlistment for foreign service, but authorized all individual efforts of that nature in cases of stringent necessity for defense abroad and in the country.

The Brazilian penal statute has omitted such provisions, and we shall not criticise it on that account. It incriminates only in a general manner, under article 73, the fact of hostilities against the subjects of another nation, such as to endanger peace or to provoke to reprisals.

[393] *The Spanish statute, under article 147, No. 6, inflicts the pun-

ishment of irons up to that of death on any one who shall, within the territory of Spain, recruit men for the service of the armies of an hostile power. We shall therefore omit it with regard to our present article.

The statute of Sardinia, article 181, and that of the Two Sicilies, concur with our two cases, between which, however, they make a difference.

In the first case the Sardinian statute inflicts temporary reclusion or the galleys, according to circumstances, and capital punishment in the second. The statute of the Two Sicilies inflicts also capital punishment in the latter case, but in that of our article it inflicts temporary exile.

The modern Bavarian statute, article 306, No. 4, provides for an offense which is substantially the same, and is considered as treason at the fourth degree, and punished as such with imprisonment for a term of two to six years.

Celui qui enrôlera secrètement des sujets du royaume au service *d'une puissance belligérante étrangère, ou qui prêtera aide et assistance à un recruteur non autorisé* pour l'exécution de ses desseins.

Under the other German statutes, in connection with the crime of treason, *are considered and punished as being preparatory acts*
[394] *thereto the recruiting* and pur*chases of arms and munitions. The same doctrine is to be found in the Prussian statute, section 64.

Finally, the Austrian statute, under article 77, concurs also with our article, but it provides only that a similar crimination be punished by the military law, confining it, however, to the state of war with the recruiting nation.

Celui qui enrôle des hommes pour un service militaire étranger * * * *est jugé et puni conformément aux lois militaires, par le pouvoir militaire.*

This observation was presented by Cambacerès to the council of state during the discussion of the French penal statute. Mr. Berlier replied that there was no inconvenience in inscribing such provision in the statute. But the above-mentioned Chauveau and Hélié answered then that such a crimination would be useless, because, if it is acknowledged that the incriminated facts are of a military character, he did not see any reasonable ground that would justify such an exception as inserting said provision in the common law. It would be a derogation of the order of matters which was proposed to be followed by the statute.

However, if the defendants on the crime under our said article be not soldiers, they cannot be tried by the military courts, in accordance with the provisions of our statute, article 16.

[395] As regards the penalty, that of correctional im*prisonment and the fine, we acknowledge that it is appropriated to the offense under said article. It is one of the very few cases where pecuniary punishment has not the inconvenience of being confiscation. Without pecuniary means no one does recruit, no one becomes a soldier, no one hires himself or procures himself to be hired. Money is here the principal inducement, or the instrument, of the offense. A heavy fine is certainly a means to stop it, in conformity with article 81 of the statute.

However, the offense may be of greater or of less gravity, the circumstances of the case may exculpate or not, and in a greater or less degree, according to the intention of the offender. To recruit in a foreign country for raising the cry of liberty, of independence, or of legitimacy, is an enterprise which excites the sympathies of a noble public, and of all men who hate tyranny, injustice, usurpation. To recruit in order to restore absolute power, to co-operate in conquest, to re-establish the inquisition, to destroy the property or credit of another nation, this is a crime which excites horror, and which is detested by all those who appreciate order, peace, and the happiness of mankind.

What! must such proceedings be incriminated if intended to succor a nation struggling with unequal forces in order to maintain its independence or its liberty, or its legitimate prince?

[396] *Upon these promises a penalty which always threatens with the maximum of punishment is a vicious one, as it cannot be divided. It necessarily causes a too severe punishment to be inflicted on the offender whose object was noble and generous, as well as the one whose object was abominable and base. Moreover, recruiting or enlisting for maritime service is not in itself as important as enlisting or recruiting for the military or naval service of a foreign power.

Reciprocal free trade between nations, which is so profitable and so worthy of encouragement, shall always exculpate an infringement of a mere formality of authorization.

In mercantile speculations connected with travels by sea, one day's, one hour's delay, may miscarry a good business, ruin or render worthless a commercial operation which would otherwise have proved most profitable had it been managed in due time. The secret itself, which is often necessary to keep, the secret which is the soul and life of such undertakings, will not permit to be particular about the delay for preparatory acts, delay which would involve the necessity of an authorization in similar cases.[1]

[397] *Thus, if considered under this point of view, the defects
[398] *of the penalty are greater still. The same punishment is not inflicted for facts of different gravity with regard to the intention, but of different gravity with regard to their actual character.

[399] *This crimination has its grounds in the doctrines of Wolf and

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[1] Mr. Levy contends that said article is to be understood as providing only for warlike service; he grounds his opinion on the fact that the contrary would be so absurd that it is not possible to suppose that the legislator would have enacted it. But, notwithstanding all the respect and deserved admiration we pay to the young jurisconsult, we do not see in the words nor in the context of the article any conclusive reason for limiting its provisions. Were it even an aberration from all that has been enacted on the subject in other statutes, as the incriminated fact is only a delinquency, the legislator may have considered the necessity of manning our own men-of-war and merchantmen, and we do not, therefore, consider said provision to be so absurd as it should appear at first. The recruiting of sailors for the national mercantile shipping is not prejudicial to the recruiting for the navy, but moreover our men-of-war can be supplied with men from our merchant-vessels, while, on the contrary, the recruiting for foreign merchantmen deprives our navy of sailors. And it is so well the case that, under the regulations of the 30th of August, 1839, article 13 of chapter 3, all merchantmen are to be minutely searched in order that they do not *raise Portuguese sailors without leave*, and, if any such sailors be found on board, the captain of the port is to take them immediately into custody and give them up to the police officer, who shall, by the first opportunity, send them to the navy guard, where they shall be shipped on board a vessel of the Crown. And under the provisions of the additional article, the said captain is bound to make all possible diligence, in order to have always a list of all the sailors, *with declaration of the number of men upon whom one may reckon for the service of the fleet*.

Thus, the meaning of foreign naval service, though not military, *but naval service generally*, can, without appearance of absurdity, be considered as involved in the words "*military service or foreign naval service*," so much the more that in this way the fact of *non-authorization* is incriminated against the *recruiting agent*, as it was incriminated against the recruits and the parties accepting to be enlisted, by sections 1 and 2 above mentioned, with the express designation of *merchantmen*.

Anyhow, we acknowledge that the wording of the article is not good, but we deem it more proper to criticise the law, in order that it be altered, than to resort to the last of arguments, the argument *ex absurdo*. in order that its literal provisions be contradictory with themselves. *Dura lex, sed lex.*

Vattel, claimed by the American Government in 1793 in the beginning of the war in Europe, and which have been incorporated in an act of Congress of 1794, corrected and re enacted in 1818.

Under the provisions of said act it is not only an offense to increase the force of a vessel of war of a friendly country, and to prepare a military expedition against said country, but equally to hire or recruit men for any foreign service on land or on the water.

The example of America was soon followed by Great Britain, by an act of Parliament, (59 Geo. III, cap. 59,) known as "An act to prevent the enlistment or recruiting of His Majesty's subjects for foreign service, or the armament and equipment within His Majesty's dominions, with an intent of war without His Majesty's permission."

The principal reason upon which Vattel and Wolf ground their opinion in condemning enlistments without the authorization of the government, is, that recruiting constitutes an exclusive prerogative of sovereignty, which no one can legitimately exercise, without express leave, in the territory of another state.

[400] But all the prerogatives of sovereignty *have their just limits. It does not extend further than what is required in order to accomplish the social object. If the enlistment be not prejudicial to the national military service, if it does not free the recruits of the tribute of blood they are to pay to their country, where is, then, the offense against its prerogative?

The federal constitutional act of Germany, signed at Vienna on the 8th day of June, 1815, permits, by article 18, all subjects of the confederated states "to enter the civil or military service of any of those states, provided that such right do not interfere with the obligation incumbent on said subjects to enter the military service in their own country if required to do so by statute."

The Americans have amplified the principles of natural law, claiming in favor of their absolute neutrality, that as a man must remain in peace with another man who does not assault him, thus also a nation must behave toward another nation.

But this argument is not right in the present case, because it would assume that the natural law is false, which not only does not incriminate so much personal defense as that of another person (a principle which has been adopted by our statute, article 14, No. 3, and [401] *other articles concurring with it,) but it condemns still more, as being immoral, the fact of a man who remains an indifferent looker-on to a fight between two of his fellow-creatures, and allows one of them to be killed or severely wounded, when it is in his power to assist him.

But there is nothing therein which can be applied to service on board of merchantmen in time of peace, when there is no appearance of any concealment or fraudulent preparations for war.

In short, this crimination involves facts of different gravity and different character, which it would be convenient to discriminate from each other, and to punish in a different manner according to the character of the offense, which would be consistent with justice, but cannot be done with the penal provisions of the article, the same maximum of punishment being enacted for all offenses under said article.

With regard to the amendment in section 1, we consider this solution as adequate to the legislator. When the recruiting agent is a foreigner, and does not entertain any hostile views against us, the most proper course is to expel him from the kingdom.

[402] And this penalty has not the same *inconvenience as the above-

mentioned ones, because being only temporarily inflicted, without declaration, the foreigners are to be expelled from the country for a term of years not to exceed twelve years, and which can, according to circumstances, be reduced to three years, in conformance with article 36.

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[403] *No. 2.—EFFORTS TO PRESERVE THE NEUTRALITY OF THE AZORES AND MADEIRA.

Mr. Harvey, United States minister, to Mr. Seward, Secretary of State.

[Extract.]

LEGATION OF THE UNITED STATES,
Lisbon, October 3, 1862.

SIR: After my No. 157 was dispatched on the 29th ultimo, I had a personal interview with the Viscount Sada Barrdeira, the minister of war, who is also acting as minister of foreign affairs during the absence of the Marquis de Loulé, in reference to the outrages at the Azores, the conduct of the Portuguese authorities there, and other matters connected with the general subject. I carried with me some of the testimony bearing on the important points, and submitted it to him with explanatory comments.

He was frank enough to say that the islands in question had been used and abused by corsairs and pirates during centuries; that they were exposed and unprotected, and therefore might be so employed again; and that our best plan would be to send a sufficient force there to protect American ships against threatened depredations and [404] to punish criminal *offenders. I informed him that two war-steamers had already been ordered to the islands, and that the sloop-of-war Saint Louis was ready to sail; but I had detained her a day for my own dispatches, and offered him that opportunity of communicating with the Portuguese officials. He thanked me for the courtesy, but said it would be impossible to prepare any instructions within the time named, and that the authorities of the Azores were already possessed of the views of the government through the royal proclamation of last year.

I called his attention particularly to the report of a project to establish a coal depot for "confederate" cruisers on the islands, saying that it was part of a plan to equip and arm against our commerce in flagrant disregard of the king's proclamation. It was agreed between us that I should address him a note on the subject, directing attention to the points most requiring prompt consideration. A copy of that note is now inclosed for your information. It needs no explanation at my hands.

No effort has been spared and no precaution neglected which care and prudence could suggest or provide for this emergency. In fact [405] all the resources at my disposal or discretion *have been exhausted, and I may say, without egotism, at least energetically, if not wisely.

I am, sir, very respectfully, your obedient servant,

JAMES E. HARVEY.

HON. WILLIAM H. SEWARD,
Secretary of State.

Mr. Harvey, United States minister, to Mr. Seward, Secretary of State.

LEGATION OF THE UNITED STATES,
Lisbon, January 20, 1864.

SIR: The accompanying copy of a note from the Duke de Soule, in answer to one which I addressed to him on the 14th instant, in reference to the arming of piratical cruisers in Portuguese ports, was only received last night, though dated on the 16th instant.

I have the honor to be, &c.,

JAMES E. HARVEY.

Hon. WILLIAM H. SEWARD,
Secretary of State.

[Inclosure.]

Duke de Loulé, minister of foreign affairs, to Mr. Harvey, United States minister.

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS,
Lisbon, January 16, 1864.

[406] *I have had the honor of receiving the note which you were pleased to address me under date of the 14th instant, making known to me the information you had received, that the English bark Agrippina was carrying to the Azores a cargo of munitions of war for the supply of confederate cruisers.

Being thus apprised of the contents of your aforesaid note, it is my duty to inform you that under this date, I address the ministers of the interior, finance, war, and navy departments, in order that, with all urgent speed, they may adopt the most energetic measures to prevent the furnishing of such articles to confederate vessels.

I avail myself of this opportunity to renew the assurances of my most distinguished consideration.

DUKE DE LOULÉ.

JAMES E. HARVEY, Esq., *&c., &c., &c.*

The Duke de Loulé, minister of foreign affairs, to Mr. Harvey, United States minister.

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS,
Lisbon, January 23, 1864.

[407] With reference to the note which you were *pleased to address me under date of the 14th instant, requesting that preventiv measures might be adopted with regard to the English bark Agrippina, which, according to information, purposed carrying to the Azores a cargo of munitions of war for supplying the confederate cruisers, it is my duty to inform you that the minister of the interior has advised me in his communication of the 20th instant, as having forwarded, on tha same date, to the civil governors of the district of the Azores and Madeira, a *portario*, of which a copy will be found inclosed.

By the contents thereof, you will perceive that proper instructions have been furnished to the aforesaid authorities to enable them to thwart the intentions and speculations of all corsairs inimical to the United States.

These same orders may, for greater speed, be forwarded by the corvette Saint Louis, as you propose, and to this end I have the honor of transmitting the same to you to be sent to their destination.

I avail myself of this opportunity to renew the assurance of my most distinguished consideration.

DUKE DE LOULÉ.

JAMES E. HARVEY, *&c.*, *&c.*

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[408] *[Inclosure.]

Instructions to the governors of the Azores and Madeira.

[Translation.]

MINISTRY OF THE INTERIOR, SECOND DEPARTMENT,
Lisbon, Royal Palace, January 20, 1864.

The inclosed authentic copy of a note from the minister of the United States of America at this court, having made known that the English bark Agrippina contemplates carrying to the Azores a cargo of munitions of war for supplying confederate cruisers, which are to go there to receive them, in order to continue their depredations on the commerce of the United States in the same manner as the aforesaid bark did before in 1862, in the bay of Angra, and it being further made known that the parties implicated in these nefarious undertakings propose to establish a regular depot in one or more of the smaller ports in the said islands, with the view of organizing therein armed expeditions hostile to the aforesaid United States, His Majesty the King desires that a knowledge of the above be communicated to the civil governor of the district of Angra de Heroismo, and ordains that, taking into his most serious consideration the contents of the above-mentioned note, and the reclamation therein contained, the same civil governor shall adopt all such measures as may be necessary to completely [409] *put a stop to the aforesaid designs and intentions on the part of the enemies of said United States; and for this purpose he is to co-operate with the directors of custom-houses and captains of ports within the district under his charge, so as to act with a mutual accord, to which effect orders, with strong recommendation, have been sent to them through the respective departments. An immediate account is to be rendered, through the department, of all that may be done or put into practice on this subject, with the understanding that His Majesty makes the civil governor and his subordinates responsible for any neglect or omission in such a grave and delicate affair.

DUKE DE LOULÉ.

True copy.

OLYMPIO JOAQUIN DE OLIVERIA.

DEPARTMENT OF FOREIGN AFFAIRS, *January* 23, 1864.

True copy:

EMILIO ACHILLES MONTEVERDE.

The Duke de Loulé, minister of foreign affairs, to Mr. Harvey, minister of the United States.

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS,
January 23, 1864.

In addition to my note of this day's date, I have the honor of informing you that through the navy department the most positive [410] orders have been trans*mitted to all the authorities dependent on the said department, in the sense of your note addressed to me under date of the 14th instant, and that probably a man-of-war will start for the Azores to aid the aforesaid authorities.

I avail of this opportunity to renew the assurances of my most distinguished consideration.

DUKE DE LOULÉ.

JAMES E. HARVEY, Esq.

Mr. Harvey, United States minister, to the Duke de Loulé, minister of foreign affairs.

LEGATION OF THE UNITED STATES,
Lisbon, January 25, 1864.

SIR: I have had the honor to receive your note of the 23d instant, communicating a copy of a *portario*, addressed to the civil governors of the Azores and Madeira, founded upon representations made by me in reference to the designs and movements of certain piratical cruisers, reported as intending to rendezvous and equip at the island possessions of His Majesty against the commerce of the United States.

It is my duty and pleasure to say that the instructions contained in that *portario* are consistent with the friendship and good feeling which has so long and happily subsisted between Portugal and the United States, and which it is to be hoped may not only be still longer [411] continued, but united even more closely *and strongly.

The United States ship St. Louis sailed yesterday for the Azores direct, intending subsequently to touch at Madeira. Her commander is charged to deliver, personally, the dispatches to the various authorities at the islands, which your excellency, at my suggestion, addressed to my care.

I avail myself of this opportunity to tender the assurances of my most distinguished consideration.

JAMES E. HARVEY.

His Excellency the DUKE DE LOULÉ,
Minister and Secretary of State for Foreign Affairs.

Mr. Harvey, United States minister, to Mr. Seward, Secretary of State.

[Extract.]

LEGATION OF THE UNITED STATES,
Lisbon, January 30, 1864.

SIR: The Duke de Loulé addressed me a fourth note, (of which a copy in translation is inclosed,) yesterday, on the subject of my recent representation, and from which it appears that the entire authority of every department of His Majesty's government has now been seriously and energetically invoked to prevent rebel cruisers from arming or equipping in the island ports of this kingdom.

I have the honor to be, &c.,

JAMES E. HARVEY.

Hon. WILLIAM H. SEWARD,
Secretary of State.

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[412] **The Duke de Loulé, minister of foreign affairs, to Mr. Harvey, United States minister.*

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS,
January 29, 1864.

I have the honor of informing you, in addition to my notes of the 23d instant, that the minister of finance informs me, in a communication of the 20th instant, that on the same day the most positive orders were being sent to the directors of custom-houses in the Azores Islands, to the effect of their adopting, under the severest responsibility, all such measures as may be within their reach, to prevent confederate vessels from supplying themselves with munitions of war in the custom-ports of said archipelago.

It is my duty further to inform you that the minister of war has advised me under that same date that, notwithstanding the orders already transmitted to the general commanding the tenth military division, which were communicated to you on the 2d December, 1862, he now again recommends the aforesaid general to employ the utmost vigilance, and to give his most positive orders, so as, by co-operating with all the other local authorities, to frustrate all plans and attempts of the confederates, and thus maintain a rigorous compliance with the decree of July 29, 1861.

I renew on this occasion the assurances of my most distinguished consideration.

DUKE DE LOULÉ.

JAMES E. HARVEY, Esq.

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[413] **Mr. Harvey, United States minister, to Mr. Seward, Secretary of State.*

LEGATION OF THE UNITED STATES,
Lisbon, February 2, 1864.

SIR: I transmit herewith a copy of a note (in translation) which the Duke de Soule has addressed to me, stating the Portuguese war-steamer Mindello had been dispatched to the Azores to carry out practically the recent assurances of His Majesty's government of an intention to prevent the arming or equipment of piratical cruisers in Portuguese ports against the commerce of the United States.

I have the honor to be, &c.,

JAMES E. HARVEY.

HON. WM. H. SEWARD,
Secretary of State.

The Duke de Loulé, minister of foreign affairs, to Mr. Harvey, United States minister.

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS,
January 29, 1864.

In addition to the notes addressed you on the 23d and 26th instant, I have now the honor to inform you that on the 26th instant the Portuguese steamer of war Mindello left this port bound for the Azores, in order to superintend the execution of the orders transmitted to the respective authorities regarding the punctual compliance with [414] the decree *of July 29, 1863.

I renew on this occasion the assurances of my distinguished consideration.

DUKE DE LOULÉ.

JAMES E. HARVEY, Esq.

No. 3.—LIMITATION OF ASYLUM TO THE FLORIDA AT FUNCHAL.

Mr. Harvey, United States minister, to Mr. Seward, Secretary of State.

LEGATION OF THE UNITED STATES,
Lisbon, May 24, 1864.

SIR: I transmit herewith translations of various correspondence between the authorities of the island of Madeira, the commander of the rebel cruiser Florida, and the United States vice-consul, in reference to the supplies which were furnished to the Florida at Funchal in February last.

I have the honor to be, &c.,

JAMES E. HARVEY.

Hon. WM. H. SEWARD,
Secretary of State.

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[415] *[Inclosure.]

Governor Perdigao to the captain of the port of Funchal.

[Translation.]

CIVIL GOVERNMENT OF FUNCHAL,
February 28, 1864.

MOST EXCELLENT SIR: I have just been informed, by an official communication from yourself, that the ship Florida, a South American corsair, sailing under the so-called flag of the Confederate States, which have not been recognized by us, has entered and is now at anchor in this port.

In view of the decree of the 29th July, 1861, a vessel in those circumstances can only enter the ports of Portugal when compelled thereto by *force majeure;* and as such case has not happened, nor is it invoked by the commander of said vessel to legalize or justify his stay in this port, I find myself compelled, in conformity to the law, and in obedience to all those principles of loyalty which are due to the flag of a friendly nation, to request that your excellency will be pleased to intimate to the aforesaid commander to leave this port with all possible speed.

Your excellency will be pleased to keep me informed of all that may occur in carrying out the present commission.

God preserve your excellency.

The civil governor,

JACINTHO ANTONIO PERDIGAO.

His Excellency the CAPTAIN
Of the Port of Funchal.

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[416] *[Inclosure.]

The captain of the port of Funchal to Governor Perdigao.

[Translation.]

FUNCHAL, *February* 28, 1864.

MOST EXCELLENT SIR: In compliance with the orders received from your excellency, I have intimated to the commander of the war-steamer Florida to leave this port within twenty-four hours, and in reply to said intimation I have received from said officer a communication, of which I have the honor of transmitting a copy to your excellency, wherein the said commander declares he was forced to come into this port in want of water, bread, and coals, and that consequently it is impossible for him to quit this port without those articles. Your excellency will decide whatever is just, and I await your excellency's orders on this head.

God preserve your excellency.

JOAQUIN PEDRO DE CASTELBRANCO,
Post-Captain R. N., and Captain of the Port.

His Excellency DN. JACINTHO ANTONIO PERDIGAO,
Civil Governor of the Funchal District.

[Inclosure.]

Lieutenant Morris to the captain of the port.

CONFEDERATE STATES STEAMER FLORIDA,
Off Funchal, February 28, 1864.

[417] *SIR: In answer to your request that I should leave this port immediately, I have to state that it is utterly impossible to comply. I would state that I arrived here last night at 11 o'clock, and am out of coal, and require water and bread, and do hereby enter my protest against being forced to leave without the above-mentioned necessaries, and must decline doing so. Should any mishap befall this vessel while out of fuel, your government will be responsible for the same. It is actually necessary to have coal, not only for the purpose of propelling the vessel, but also to make fresh water, as this vessel carries a very

small quantity of the latter. I only ask for what the English, French, Spanish, and Brazilian governments, and also your own government, have already granted to our vessels.

I have the honor to be your most obedient servant,

C. MARUGAULT MORRIS,
Lieutenant Commanding.

Captain JOAQUIN PEDRO DE CASTELBRANCO,
Captain of the Port of Funchal, &c.

[Inclosure.]

Captain of the port to Governor Perdigao.

[Translation.]

FUNCHAL, *February* 29, 1864.

[418] MOST EXCELLENT SIR: I communicated your *excellency's order to the commander of the steamer Florida, said orders being to the effect that he might acquire the provisions and water required to proceed on his voyage; and that with regard to coal, your excellency only allowed him to take twenty tons. In reply I have this day received a communication from said officer, of which I have the honor of transmitting you a copy inclosed, wherein said commander states he cannot proceed on his voyage without taking in forty tons of coal.

A short time after my receiving this communication, this officer came to me, and I then made known to him your excellency's positive orders, and he at last agreed to leave this evening, taking only the twenty tons of coals allowed by your excellency, declaring that he would not proceed to sea under these circumstances should any war-steamer of the United States make her appearance in sight at the moment of his leaving the port.

God preserve your excellency.

JOAQUIN PEDRO DE CASTELBRANCO,
Post-Captain and Captain of the Port.

His Excellency the CIVIL GOVERNOR
Of the Funchal District.

[Inclosure.]

Lieutenant Morris to the captain of the port.

CONFEDERATE STATES STEAMER FLORIDA,
Funchal, February 29, 1864.

[419] *SIR: Your letter of the 28th instant, in answer to a communication which you received from me of the same date, setting forth the reasons for my not leaving this port, &c., has been received. You state that his excellency the governor consents to my being supplied with bread, water, and twenty tons of coals to enable this vessel to proceed to the high seas.

I will state that I require forty tons of coal to reach the nearest port.

I am, sir, with much respect, your obedient servant,

C. MARUGAULT MORRIS,
Lieutenant Commanding, C. S. N.

JOAQUIN PEDRO DE CASTELBRANCO,
Captain of the Port, &c.

[Inclosure.]

Governor Perdigao to the captain of the port.

[Translation.]

CIVIL GOVERNMENT OF FUNCHAL,
February 29, 1864.

MOST EXCELLENT SIR: On view of your communication, wherein you inform me that you had intimated to the commander of the ship Florida—South American corsair—to quit this port, and make known his reply, whereby he alleges the existence of *force majeure* in his being short of provisions, water, and coals to navigate, it is my duty to inform you that I consider that ship only entitled to protection under the general [420] *laws of humanity; and I understand that, according to said laws, we need not deny to any one the necessary means of subsistence, and therefore agree to his being furnished with such provisions and water as he may require, but cannot do the same with regard to coals; whereas said ship being built on the mixed system, and being therefore enabled to navigate by means of her sails, as she no doubt has already done, and as is evident from the fact of her having taken eighteen days in coming from Brest to this port; and it not being consistent with my duty that she should, within the territory confided to me, be permitted to furnish herself with that article in a greater quantity than what is necessary for her to leave this port, attain such a distance off as not to be prejudiced by the ship of war of the United States which is likewise now at anchor in this port, and for the purpose of cooking on board, I think that I am only authorized in allowing her to be furnished with twenty tons of coal; which quantity, although not sufficient to put her in a position of causing damage, is nevertheless sufficient to avert any danger to which she might, by chance, be exposed on leaving this port.

In this sense your excellency will be pleased to communicate with the commander of the aforesaid corsair and apprise me of the result.

God preserve your excellency.

[421] *The Civil Governor,
JACINTHO ANTONIO PERDIGAO.

His Excellency the CAPTAIN
Of the Port of Funchal.

[Inclosure.]

Governor Perdigao to the director of customs.

[Translation.]

CIVIL GOVERNMENT OF FUNCHAL,
February 29, 1864.

MOST ILLUSTRIOUS SIR: Having been informed by the captain of this port that the commander of the ship Florida—South American corsair—now at anchor here, had declared himself unable to leave this port in compliance with the intimation made to him by my orders, seeing that he was in want of provisions, water, and coals; and I having resolved that in view of the duties of humanity, which must be extended to him and which do not compromise other duties, equally sacred, of loyalty toward the flag of a friendly nation, he should be permitted to furnish himself with whatever provisions and water he may require, and with twenty tons of coal, which I consider sufficient to enable him to leave this port without danger, and to cook provisions on board, I now inform you hereof in order that you may be pleased to authorize the shipment of the said quantity of coal, and using supervision in not allowing these limits to be exceeded.

God preserve you.

[422] *The Civil Governor,

JACINTHO ANTONIO PERDIGAO.

Most Illustrious DIRECTOR OF CUSTOMS, *Funchal.*

[Inclosure.]

Governor Perdigao to the United States consul.

[Translation.]

CIVIL GOVERNMENT OF FUNCHAL,
February 29, 1864.

MOST ILLLUSTRIOUS SIR: I have the satisfaction of informing you that the commander of the ship Florida (South American corsair) has, according to the communication of the port captain and his own verbal declaration to me, in the presence of two persons, accepted the concession granted to him for furnishing himself with provisions and water which he needs, and twenty tons of coal, the latter having been agreed with you and I having consented thereto, as a sufficient quantity to enable him to leave the port and place himself at such a distance as not to fear his being harmed by the American corvette of war now lying in this port, and for purposes of cooking on board; and the said commander has compromised to leave this evening, provided that up to the moment of quitting no American war-steamer shall heave in [423] *sight, in which case he desires and requires to keep himself under the protection of the flag in whose waters he is now riding at anchor. He, however, has asked me that, following the example of what is done in the ports of other nations, all means might be employed toward obtaining that the United States war-ship in this port may only leave this port twenty-four hours after his departure; and it being my desire to maintain complete impartiality, thus communicate the same to you, hoping that you will agree with the commander of the American corvette now here, so as to comply with the said request, which I consider reasonable and in harmony with those principles of equity which are due to all.

Be pleased to acknowledge receipt of the present dispatch and to reply thereon as you think fit.

God preserve you,
The Civil Governor,

JACINTHO ANTONIO PERDIGAO.

Most Illustrious VICE-CONSUL
of the United States.

[424] *[Inclosure.]

The captain of the port to Governor Perdigao.

[Translation.]

FUNCHAL, *March* 1, 1864.

MOST EXCELLENT SIR: I have the honor of informing your excellency that the American steamer Florida left the port last night, about 8.30 p. m., having received the provisions and water which she desired and the twenty tons of coals which your excellency permitted her to take.

God preserve your excellency.

JOAQUIN PEDRO DE CASTELBRANCO,
Post-Captain R. A. and Captain of the Port.

His Excellency DON JACINTHO ANTONIO PERDIGAO,
Civil Governor of the District of Funchal.

No. 4.—CASE OF THE STONEWALL AT LISBON.

Mr. Harvey, United States minister, to Mr. Seward, Secretary of State.

LEGATION OF THE UNITED STATES,
Lisbon, March 28, 1865.

SIR: I have the honor to inform you that the rebel cruiser
[425] Stonewall, a most formidable iron-clad ship, *entered this port on Sunday evening, the 26th instant, having left Ferrol the previous day. As the flag which was flaunted from her mast-head was entirely unknown here, and somewhat resembles that of the Russian service, she was generally supposed to belong to that navy; and, in fact, the real character of the vessel was not ascertained positively until the next morning, when certain individuals, calling themselves officers, published their disloyalty in the streets in gray uniform and arrogant language.

As soon as I was informed of the identity of the craft, immediate steps were taken, personally, to have her ordered out of port, and they were followed later in the day by a formal note to Duke de Loulé, now inclosed, (marked A,) which will explain itself.

Assurances were given without hesitation that the vessel would be required to depart within twenty-four hours; and I have occasion to know that the orders were at once made, and the notice officially communicated to the Stonewall.

Large inducements were held out to procure enlistments in Lisbon. As much as £10 sterling monthly wages, and £15 bounty were offered, but only one misguided and dissipated victim was secured, and he by a process of kidnapping. The fact only came to light too late to be visited with the penalty which I should certainly have assisted in seeing enforced.

[426] *I also communicate herewith, marked E, a copy in translation of the note of the Duke de Loulé, in reply to mine of yesterday's date.

These papers and this general statement concerning the cruiser Stonewall since her presence in the Tagus will enable the President and the Department to appreciate understandingly the official proceedings which were adopted to meet an exceptional and vexatious emergency.

I have the honor to be, sir, your obedient servant,

JAMES E. HARVEY.

HON. WM. H. SEWARD,
Secretary of State.

Duke de Loulé, minister of foreign affairs, to Mr. Harvey, United States minister.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,
March 28, 1865.

SIR: I received the note which you were pleased to address me, under yesterday's date, regarding the entry in this port of the steamer Stonewall, wherein, after sundry considerations on this occurrence, you make the following requests:

1. That His Majesty's government shall immediately take the necessary steps to order that vessel away.
2. That she be not allowed to receive supplies of coal.
3. That the enlistment of seamen, firemen, or any other individuals be prevented.

[427] *In reply I have the honor of informing you that, so soon as His Majesty's government was made aware of the arrival of said vessel, and that the cause thereof was the want of coal, intimation was given to the respective commander that on completing his supply, and within twenty-four hours, he should proceed to sea. Said term expired this afternoon. On perceiving this morning that the vessel was still at her anchorage, a naval officer was sent on board to ascertain the reason why she had delayed her starting. The said officer, on his return, stated that if the Stonewall had not started within the prescribed time, it was owing to her not having taken in all the coal, and there being to-day a strong current the commander was afraid that a slight derangement in his capstan might prevent his weighing anchor; and the latter further declared that as soon as the current might diminish its intensity he would quit the port, and this he effected about 10.50 a. m.

Regarding the supply of coal, against which you insist, allow me to observe that the vessel being a steamer His Majesty's government could not avoid, with good foundation, that she should be provided with that article, for the same reason that it could not deny to any sailing-vessel, in a dismantled state, to provide itself with the needful sails. In reply to your third request, and to what you say regarding the English [428] brig *Fairline and the schooner Merton Castle, which were about sailing for Lisbon with munitions of war, chains, and anchors supposed to be destined for the Stonewall, I hasten to assure you that His Majesty's government, having greatly at heart not to give any motive which might alter the friendly relations and the good harmony which happily subsists between Portugal and the United States, has not hesitated in adopting all necessary measures, through the departments of marine, interior, and finance, to put a stop to all such plans.

I avail myself of this opportunity to renew the assurances of my most distinguished consideration.

DUKE DE LOULÉ.

JAMES E. HARVEY, Esq., *&c.*, *&c.*, *&c.*

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[431] *IV.—BRAZIL.

CODIGO CRIMINAL.

PARTE II.—Dos crimes publicos.

TITULO I.—Dos crimes contra a existencia politica do imperio.

CAPITULO I.—Dos crimes contra a independencia, integridade e dignidade da nação.

ART. 69. Provocar, directamente e por factos, uma nação estrangeira

a declarar a guerra ao imperio, se tal declaração se verificar e se seguir a guerra:

Penas.—No gran maximo, dezoito annos de prisão com trabalho. No gran médio, doze annos, idem. No gran minimo, seis annos, idem.

Se da provocação não se seguir a declaração da guerra, ou se este, posto que declarada, se não verificar, ficando a nação sem damno ou prejuizo:

Penas.—No gran maximo, seis annos de prisão com trabalho.
[432] No gran médio, quatro annos, idem. No *gran minimo, dous annos, idem.

Se para não se verificar a guerra declarada, em consequencia da provocação, por preciso algum sacrificio da nação, em prejuizo de sua integridade, dignidade ou interesses:

Penas.—No gran maximo, doze annos de prisão com trabalho. No gran médio, sete annos e seis mezes, idem. No gran minimo, tres annos, idem.

ART. 73. Commetter, sem ordem ou autorisação do governo, hostilidades contra os subditos de outra nação, de maneira que se comprometta a paz ou provoquem represalias:

Penas.—No gran maximo, doze annos de prisão com trabalho. No gran médio, seis annos e seis mezes, idem. No gran minimo, um anno, idem.

Se, por tal procedimento, algum brasileiro soffrer algum mal, será o réo considerado autor delle, e punido com as penas correspondentes alem da sobredita.

ART. 74. Violar tratados legitimamente feitos com as naçãoes estrangeiras:

Penas.—No gran maximo, seis annos de prisão. No gran
[433] médio, tres annos e seis mezes, idem. No gran *minimo, um anno, idem.

ART. 82. Exercitar pirataria; e este crime julgar-se ha commettido:

§ 1º. Practicando no mar qualquer acto de depredação ou de violencia, quer contra brasileiros ou contra estrangeiros con quem o Brasil não esteja em guerra;

§ 2º. Abusando da carta de corso, legitimamente concedida, para practicar hostilidades, ou contra navios brasileiros ou de outras nações, que não fosse autorisado para hostilisar;

Penas.—No gran maximo, galés perpetuas. No gran médio, vinte annos de prisão com trabalho. No gran minimo, dez annos, idem.

§ 6º. Aceitando carta de corso de um governo estrangeiro sem competente autorisação:

Penas.—No gran maximo, oito annos de prisão com trabalho. No gran médio, cinco annos, idem. No gran minimo, dous annos, idem.

ART. 84. Tambem commetterá crime de pirataria:

§ 1º. O que fizer parte de qualquer embarcação que navegue armada, sem ter passaporte, matricula da equipagem ou outros documentos
[434] que provem a *legitimidade da viagem:

Penas ao commandante.—No gran maximo, desezeis annos de prisão com trabalho. No gran médio, dez annos, idem. No gran minimo, quatro annos, idem.

Penas a equipagem.—No gran maximo, oito annos de prisão com trabalho. No gran médio, cinco annos, idem. No gran minimo, quatro annos idem.—(Codigo criminal do imperio do Brazil, pelo Dr. Carlos Antonio Cordeiro. Rio de Janeiro, 1861.)

[For the circular of the Brazilian government in the original, with commentary thereon, see Apontamentos para o direito internacional, por Antonio Pereira Pinto, tom. ii, p. 386.]

435] *[Translation.]

CRIMINAL CODE OF BRAZIL.

PART II.—Of political crime.

TITLE I.—Of crimes against the political existence of the empire.

CHAPTER I.—Of crimes against the independence, integrity, and dignity of the nation.

ART. 69.—To provoke directly, and by acts, a foreign nation to declare war against the empire, if such declaration is verified and is followed by war:

Punishments.—In the highest degree, eighteen years of imprisonment with labor. In the middle degree, twelve years, ditto. In the lowest degree, six years, ditto.

If, from the provocation, a declaration of war does not follow, or if, although war be declared, it does not take effect, the nation remaining without injury or prejudice:

Punishments.—In the highest degree, six years of imprisonment with labor. In the middle degree, four years, ditto. In the lowest degree, two years, ditto.

If, in case war declared does not take place, but in consequence of the provocation, there should be necessity for any sacrifice, on the part of the nation, in prejudice of its integrity, dignity, and interest:

Punishments.—In the highest degree, twelve years of im-
[436] prisonment with labor. In the middle degree, *seven years
and six months, ditto. In the lowest degree, three years, ditto.

ART. 73.—To commit, without order or authorization of the government, hostilities against the subjects of another nation, so as to compromise peace or provoke reprisals:

Punishments.—In the highest degree, twelve years of imprisonment with labor. In the middle degree, six years and six months, ditto. In the lowest degree, a year, ditto.

If by such proceeding, any Brazilian suffers any injury, the accused shall be considered author thereof, and punished with correspondent punishments in addition to the above-mentioned.

ART. 74.—To violate treaties legitimately made with foreign nations:

Punishments.—In the highest degree, six years of imprisonment. In the middle degree, three years and six months, ditto. In the lowest degree, one year, ditto.

ART. 82.—To exercise piracy; and this crime shall be deemed to have been committed:

1. Practicing on the sea any act of depredation or of violence, whether against Brazilians or against foreigners with whom Brazil is
not in a state of war;

[437] 2. Abusing letters of marque legitimately *conceded to prac-
tice hostilities either against Brazilian ships or those of other
nations without authority to commit hostilities against them:

Punishments.—In the highest degree, galleys [or imprisonment with labor] for life. In the middle degree, twenty years of imprisonment with labor. In the lowest degree, ten years, ditto.

§ 6. Accepting letters of marque from a foreign government without competent authorization:

Punishments.—In the highest degree, eight years of imprisonment with labor. In the middle degree, five years, ditto. In the lowest degree, two years, ditto.

ART. 84. Also shall be deemed guilty of the crime of piracy:

1. Whoever makes part of any crew which navigates armed, without

having passport, rôle d'équipage, or other documents which prove the legitimacy of the voyage:

Punishments of the commandant.—In the highest degree, sixteen years of imprisonment with labor. In the middle degree, ten years, ditto. In the lowest degree, four years, ditto.

Punishments of the crew.—In the highest degree, eight years of imprisonment with labor. In the middle degree, five years, ditto. In the lowest degree, two years, ditto.

[438] [See claims of United States against Great Britain, *vol. 7, pp. 107–116, for translations of divers circulars issued by the Government of the Emperor of Brazil for the observance of his subjects for the years 1854–1872.]

[439, 440]

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[441]

*V.—SPAIN.

No. 1. Penal code.
No. 2. Case of the Stonewall.

No. 1.—PENAL CODE.

Código penal reformado conforme al texto official, con notas y observaciones, por D. Vicente Hernandez de la Rua, (*Madrid*, 1866,) *pp.* 110, 111, 113.

Art. 148. Él que, con actos no autorizados competentemente, provocare ó diere motivo a una declaracion de guerra contra España por parte de otra potencia ó expusieré á los Españoles á experimentar vejaciones ó represalias en sus personas ó en sus bienes, será castigado con la pena de prision mayor, y, si fuere empleado público, con la de reclusion temporal.

Art. 151. Él que, sin autorizacion legitima, levantare tropas en el reino para el servicio de una potencia extranjera, ó destinare buques al corso, cualquiera que sea el objeto que se proponga ó la nacion [442] ó que intente hostilizar, será *castigado con las penas de prision mayor y multa 500 á 5,000 duros.

Art. 156. El delito de pirateria cometido contra Españoles, ó subditos de otra nacion que no se halle en guerra con España, será castigado con la pena de cadena temporal, en su grado máximo á la de muerte.

El código penal, concordado y comentado por Don Joaquin Francisco Pacheco, tomo 11, *pp.* 91, 92, 96, 97, (*Madrid*, 1870.)

Art. 148. "Él que, con actos no autorizados competentemente, provocare ó diere motivo á una declaracion de guerra contra España por parte de otra potencia, ó expusiere á los Españoles á experimentar vejaciones ó represalias en sus personas ó en sus bienes, será castigado con la pena de prision mayor, y, si fuere empleado público, con la de reclusion temporal."

Cód. esp. de 1822.

Art. 258. Él que, sin conocimiento influgo ni autorizacion del gobierno, cometiere hostilidades contra los subditos de alguna potencia aliada ó neutral, ó expusieré al estado por esta causa ó sufrir una declaracion de guerra, ó á que se hagan represalias contra Españoles, será con-

denado á dar satisfaccion pública, y á reclusion ó prision de dos á [443] seis años, y pagará una multa igual á * la cuarta parte del valor de los daños que hubiere causado; todo sin perjuicio de cualquiera otra pena que merezca por la violencia cometida. Si por efecto de dichas hostilidades resultare immediatamente ó hubiere resultado al tiempo del juicio una declaracion de guerra, será castigado el reo con la pena de deportacion.

Comentario.

1. No es comun en el siglo XIX que se declaren guerras por provocaciones particulares; pero si pueden dar éstas motivo á reclamaciones muy fundadas, que se conviertan en represalias. Caso de desatenderse hé aquí, pués, la aplicacion práctica del artículo; aquí como puede haber lugar á esa prision mayor ó á esa reclusion que se indican.

2. Estos castigos son indudablemente justos. Quien expone á su patria, quien expone á sus conciudadanos á los azares de una reclamacion de tal genero, de las represalias que pueden ser consiguientes aun de las hostilidades que no son imposibles, merece sin duda una ejemplar y severa correccion. Seria el colmo del escandalo que sus compatricios ó el estado sufriesen las consecuencias de su mala obra, y que él riese entre tanto presenciandolas en quietud y seguridad.

[444] *ART. 151. "Él que, sin autorizacion legitima, levantare tropas en el reino para el servicio de una potencia extrangera, ó destinare buques al corso, cualquiera que sea el objeto que se proponga ó la nacion á que intente hostilizar, será castigado con las penas de prision mayor y multa de 500 á 5,000 duros."

Comentario.

1. Hé aquí dos acciones: la de alistar tropas para servicio extranjero y la de destinar buques al corso, tambien en provecho de una causa extranjera, que la lei podia autorizar ó reprimir, segun los principios que le pluguiesen. De hecho, la conciencia humana no señala estos actos como criminales, y la mayor parte de los códigos nada dicen acerca de ellos. No habia una necesidad de constituirlos en delito; no la habia de imponerles las penas aquí señaladas, ni aún, en rigor, ningunas otras.

2. Sin embargo, comprendemos, y lo que es mas, aprobamos el sistema de nuestra ley. Parecenos bien que los Españoles no tengan esa facultad que disfrutan los habitantes de algunos otros pueblos, de armar y alistar reclutas, para ponerlos al servicio de una potencia extraña; de destinar buques al corso, para servir los intereses de esas mismas [445] potencias. Es la guerra de por sí una *cosa bastante grave, y pueden comprometer mucho á la patria los armamentos que en ésta se ejecuten, para que nos parezca bien que pueda cualquier individuo arrojarse á verificarlos sin autorizacion. La ley no debe querer que derramen su sangre los Españoles, si no por causas que pueda y deba aceptar España; la ley no debe querer, no debe permitir, que se maquine abiertamente de ese modo contra naciones ó pueblos que no nos han dado motivo alguno de queja. Hay siempre algo de mercenario y de poco caballeroso en esas levas de gente, á la que nos conduce ninguna idea patriótica, sino el solo interes de la ganancia. Bueno es que la ley corrija los malos y depravados instintos que quieran hacerse cundir en la nacion; bueno es que conserve el decoro de nuestro nombre, y las tradiciones de nuestra castellana fé.

Art. 156. "El delito de pirateria cometido contra Españoles, ó súbditos de otra nacion que no se halle en guerra con España, será castigado con la pena de cadena temporal, en su grado maximo á muerte."

Comentario.

1. La piratería es de por sí un crimen tan bajo como feroz. Él es robo, él es latrocinio del bandolero, mas en mayor escala y con [146] todo *el aumento de males y de peligros que trae naturalmente el elemento donde se emprende y ejecuta. La depredacion es su principal objeto, pero las violencias de toda especie, y la muerte misma, son su acompañamiento necesario; el cañon y el abordaje, indispensables medios de su obra; los desiertos del mar, teatro de sus proezas, nos indican bien todo lo que en ese ejercicio debe haber de bárbaro, de desalmado, de horroroso.

2. Como el oceano no pertenece á nacion alguna, todas las naciones se han creido con derecho para castigar este crímen, qué á todos heria y alcanzaba. Todas le han castigado. Unas le han escrito en sus códigos con su propio nombre; otras le han aplicado las penas generales de las muertes, de las violencias, de los robos que le constituyen. Pero en ninguna parte se ha mirado con indulgencia ni con indiferencia á esos bandidos y ladrones del agua, que, sin otra ley que su gusto, sin otra autoridad que la de su propio poder, han recorrido saquando, violando, destruyendo, el naturalmente pacífico espacio de los mares. Donde quiera, la conciencia humana ha inspirado y aprobado su castigo.

3. El artículo 156 de nuestro código, adoptando esta universal costumbre, ha señalado una pena general al delito de piratería, [147] donde quiera *que se cometiera. Sin embargo, no ha sido tan absoluto al designar las personas contra las cuales se ha de haber cometido. No ha dicho, por cierto, que cualesquiera que sean estas, será del mismo modo criminosa y punible la accion. Le ha limitado ó declarado tal cuando ha recaido en Españoles, ó en súbditos de una potencia que no se halle en guerra con España. Cuando la piratería se ha ejercido en daño de extranjeros que son, ó que eran enterices? enemigos nuestros, la ley ha callado, y no ha querido reconocer como delito semejante accion. Los motivos de esto son evidentes: no hemos de ir nosotros á asegurar los marès en provecho de nuestros enemigos; no hemos de ir á castigar los males y perjuicios que hubieran causado otros semejantes; seria una demasiada y contradictoria bondad el dispensarles proteccion contra quienes desempeñaban casi nuestro propio papel.

[148] **Apéndice á los comentarios del código penal de Don Joaquin Francisco Pacheco ó sea el nuevo código, comentadas las adiciones que contiene per Don José Gonzague y Serrano*, (*Madrid*, 1870,) *p.* 110.

Artículo 147. "Él que, con actos ilegales, ó que no estén autorizados competentemente, provocare ó diere motivo á una declaracion de guerra contra Espãna por parte de otra potencia ó expusiere á los Espãñoles à experimentar vejaciones ó represalias en sus personas ó en sus bienes, será castigado con la pena de reclusion temporal, si fuere funcionario del estado, y no siendolo, con la de prision.

"Si la guerra no llegare á declararse, ni á tener efecto las vejaciones ó represalias, se impondrán las penas respectivas en el grado inmediatamente inferior."

Artículo 150. "Él que, sin autorizacion bastante, levantare tropas en el reino para el servicio de una potencia extranjera, cualquiera que sea el objeto que se proponga ó la nacion á quien intente hostilizar, será castigado con las penas de prision mayor y multa de 5,000 á 50,000 pesetas.

"Él que, sin autorizacion bastante, destinare buques al corso, será castigado con las penas de reclusion temporal y multa de 2,500 á 25,000 pesetas.

Elementos del derecho civil y penal de España, precedidos de una [449] *reseña historica de la legislacion es*pañola, per los doctores D. Pedro Gomez de la Serna y D. Juan Manuel Montalban,* (*Madrid,* 1871,) *tomo* 3, *pp.* 241, 242. (Page 241.)

ART. 14. Él que, con actos ilegales, ó que no estén autorizados competentemente, provocare ó diere motivo á una declaracion de guerra contra España por parte de otra potencia ó expusiere á los Españoles á experimentar vejaciones ó represalias en sus personas ó en sus bienes, en cuyos casos estarán comprendidos los que invadieren un pais extraño y cometieren en él actos de violencia así como tambien los que ultrajaren á un enviado extranjero, será castigado con la pena de reclusion temporal, si fuere funcionario del estado, y no siendolo, con la prision mayor.

Si la guerra no llegare á declararse, ni á tener efécto los vejaciones ó represalias, se impodran las penas respectivas en el grado inmediatamente inferior.

ART. 150. Él que, sin autorizacion bastante, levantare tropas en el reino para el servicio de una potencia extranjera, cualquiera que sea el objeto que se proponga ó la nacion á quiere intente hostiliza, será castigado con las penas de prision mayor y multa de 5,000 á 50,000 pesetas.

Él que, sin autorizacion bastante, destinare al corso, será castigado con las penas de reclusion temporal y multa de 2,500 á 25,000 pesetas.

[450] Tolerar el le*vantamiento de fuerza en un pais en favor de determinada potencia, puede ser ya un acto de hostilidad mas ó menos abierta contra otra. El delito de levantar tropas para insurreccion en el reino no está comprendido en esta disposicion, pues corresponde á la categoria de los que se cometen contra la seguridad interior.

CAPÍTULO IV, (pp. 246, 247.)

ART. 155. El delito de pirateria cometido contra Españoles, ó súbditos de otra nacion que no se halle en guerra con España, será castigado con la pena de cadena temporal ó cadena perpetua.

Cuando el delito se cometiere contra súbditos no beligerantes de otra nacion que se halle en guerra con España, será castigado con la pena de presidio mayor.

Este delito, comprendido ántes en el capítulo anterior, es uno de los mas odiosos que pueden cometerse, pues ataca la seguridad de las personas, paraliza la navigacion y entorpece las transacciones mercantiles. Los lugares mismos en que se ejecuta le hacen mas alarmante y terrible. Y es de advertir que no tiene señalada pena cuando se comete contra los extranjeros que se hallan en guerra con España; limitacion qu todas las legislaciones han adoptado, y que se funda en el principio d ser lícito hostilizar al enemigo por tierra y por mar, no solo con ejércitos regulares sino con fuerzas capitaneadas por particulares, [451] para cuyo *efecto se expiden en el último caso las patentes e corso. El código reformado ha hecho una aclaracion, cual es l de que piratería constituye delito y por él se impone una grave pena cuando se dirige contra sùbditos no beligerantes; mas el corso autorizado en debida forma es lícito tambien contra estos, y no debe confundirs con la piratería.

[Translation.]

Amended penal statute congruent to the official text, with notes and observations, by Don Vicente Hernandez de la Rua, (Madrid, 1866,) *pp.* 110, 111, 112.

ART. 148. "Whoever shall, without having been permitted to do so by competent authority, have provoked or given motive to a declaration of war against Spain on the part of another power, or have exposed Spanish subjects to suffer vexations or reprisals against their persons or their properties, he shall be punished with imprisonment; and if such person be a public functionary, he shall be punished with temporary reclusion."

ART. 151. Whosoever shall, without legitimate authority, raise
[452] troops within the kingdom for the ser*vice of any foreign power, or
shall fit out privateers, whatever may be his object or the nation against which he intends to commit hostilities, he shall be punished with imprisonment, and fined from five hundred to five thousand duros.

ART. 156. "The crime of piracy committed against Spaniards, or against subjects of another nation which is not at war with Spain, shall be punished with the maximum of temporary irons or with capital punishment."

The penal statute co-ordinated and commented by Don Joaquin Francisco Pacheco, vol. 2, *pp.* 91, 92, 96, 97, *Madrid,* 1870.

ART. 148. "Whosoever shall, without having been permitted to do so by competent authority, have provoked or given motive to a declaration of war against Spain on the part of another power, or shall have exposed Spanish subjects to suffer vexations or reprisals against their persons or properties, he shall be punished with imprisonment; and if such person be a public functionary, he shall be punished with temporary reclusion."—*Spanish statute of* 1822.

ART. 258. "Whosoever shall, without the knowledge, authority, or permission of the government, have committed hostilities against any al-
lied or neutral power, or shall have exposed the state to suffer for
[453] that cause a declaration *of war, or if such hostilities shall have
been the ground for reprisals against Spaniards, he shall be condemned to give public satisfaction for such offense, and to reclusion or imprisonment for a term of from two to six years, and shall pay a fine equal to one-quarter of the amount of damages he shall have occasioned, without prejudice to any further punishment which he may be liable to incur for the violence committed. If said hostilities shall have brought on an immediate declaration of war, or if such declaration shall have preceded the time of the trial, the offender shall be punished with transportation."

Commentary.

1. It does not commonly happen in the nineteenth century that wars are declared on account of private provocations; but such provocations may be the grounds for justified claims, which, in case of misunderstanding, may cause reprisals. This is a case for the practical application of the article, and of the imprisonment or reclusion which it provides.

2. The above penalties are undoubtedly justifiable, for whoever exposes his country and his fellow-citizens to the dangers of such claims to the reprisals which may be the consequence thereof, or to the hostilities which it is not impossible may follow, is no doubt deserving o

severe and exemplary punishment. It would be most scandalous [454] that his fellow-citizens or *the State should suffer the consequences of his misconduct, while he should make a jest of it and quietly and safely witness the result.

Art. 151. "Whosoever shall, without legitimate authority, raise troops within the kingdom for the service of any foreign power or shall fit out privateers, whatever may be his object or whatsoever the nation against which he intends to commit hostilities, he shall be punished with imprisonment and fined from 500 to 5,000 duros."

Commentary.

1st. This article provides against two distinct acts: that of enlisting troops for a foreign service and that of fitting out privateers with the object also of giving assistance to a foreign cause. The law may authorize or prohibit such acts, as is thought best. In fact human conscience does not point out these acts as being criminal, and most statutes do not mention them in any way. It was not necessary to look upon such acts as an offense, nor to punish them by the penalties fixed in this article, or indeed by any other penalty.

2d. Nevertheless we understand the system of our law and approve thereof. We deem it proper that Spaniards should not have the liberty, which is enjoyed by the inhabitants of some other places, to arm and enlist recruits for entering the service of a foreign power, nor to fit out privateers to the same purpose. War is in itself a fact of too serious a character, and such armaments may too greatly endanger [455] *the safety of the country, that we should think it fit or justifiable for any person whatsoever to embark in such an enterprise without being duly authorized to do so. The law must not allow Spanish blood to be shed, except for causes such as Spain can and ought to defend. The law must not allow nor permit such open plots against nations or countries which have not given this nation any ground for complaint. There is always something mercenary and anti-chivalrous about these levies of men which does not admit of any patriotic feeling, except the mere love of lucre. It is good that the law should correct the bad and depraved instincts which individuals may attempt to propagate through the nation, and it is well that it should uphold the honor of our name and the traditions of our Castilian faith.

Art. 156. "The crime of piracy committed against Spaniards, or against subjects of another nation which is not at arms with Spain, shall be punished with the maximum of temporary imprisonment or with capital punishment."

Commentary.

1. Piracy is in itself a crime as base as it is cruel. It is the robbery and theft of the freebooter, only practiced on a larger scale, with all the increased evils and dangers which are the natural result of the element where it is practiced and carried on. Depredation is its principal object, [456] *but violence of every description and murder itself are its necessary attendants. Cannon and cutlasses are its indispensable means of action. The deserts of the seas, which are the scenes of its deeds, might easily demonstrate how barbarous, profligate, and shocking is its practic.

2. As the ocean does not belong to any particular nation, all nations

have considered themselves as entitled to punish that crime which injured and reached each one of them. All have alike punished it. Some have provided against it in their statutes, and called it by its proper name; others have punished it with the general penalties denounced against murder, violence, and robbery, which constitute piracy. But nowhere has the law looked with indulgence or indifference upon these banditti and robbers of the waters, who, with no other law than their own good pleasure, and with no other authority than their own power, have overrun the naturally peaceful seas, ransacking, violating, and destroying on their way. Throughout the world, human conscience has inspired and approved their punishment.

3. Article 156 of our statute, in adopting this universal custom, has denounced one general penalty against the crime of piracy, wherever it may be committed. It is true the provisions of our law have not [457] been of a so absolute character with re*gard to the persons against whom the crime may have been committed, and it has not provided that, whosoever these persons may be, the act shall be equally criminal and equally liable to punishment. It has limited its provisions to the case when the crime shall have been committed against Spaniards or subjects of a power which is not at war with Spain.

The law is silent for the case where piracy has been committed to the injury of foreigners who are, or were at the time, our enemies, and such acts it has not deemed proper to consider a crime. The grounds thereof are obvious. We are not bound to secure the seas for the profit of our enemies. We are not bound to punish the harm and injury they may have experienced from other enemies; it would be too great and too contradictory a kindness to deal out protection to them against those who, as it were, are performing our part.

[458] **Appendix to the commentaries of Don Joaquin Francisco Pacheco on the penal statute, or new statute, with commentaries on the additions thereto, by Don José Gonzales and Serrano, (Madrid, 1870, p. 10.)*

Art. 147. "Whosoever shall, by unlawful acts, or without having been permitted to do so by competent authority, have provoked or given motive to a declaration of war against Spain on the part of another power, or shall have exposed Spanish subjects to suffer exactions or reprisals against their persons or their properties, he shall be punished with temporary reclusion, if he be a functionary of the state, and if he be not such, with imprisonment."

"If the war be not declared, and if the vexations or reprisals be not carried into effect, the respective penalties shall be of the degree immediately below."

Art. 150. "Whosoever shall, without sufficient authority, have levied troops within the kingdom for the service of any foreign power, whatever may be his object or the nation against which he intends to commit hostilities, he shall be punished with imprisonment and fined from 5,000 to 50,000 pesetas."

"Whoever shall, without sufficient authority, have fitted out privateers, he shall be punished with temporary reclusion and fined from 2,500 to 25,000 pesetas."

[459] **Elements of the penal and civil right of Spain, preceded by a historical notice on the Spanish legislation, by the Doctors Don Pedro Gomez de la Serna and Don Juan Manuel Montalban, (Madrid, 1871, vol. 3, pp. 241, 242, 246, page 241.)*

Art, 147. "Whosoever shall, by unlawful acts, or without having been permitted to do so by competent authority, have provoked or given notice to a declaration of war against Spain on the part of another power, or shall have exposed Spanish subjects to suffer vexations or reprisals against their persons or their properties, by which acts shall be understood whoever shall have invaded a foreign country and shall have committed therein acts of violence, and also whoever shall have insulted a foreign ambassador, he shall be punished with temporary reclusion, if he be a functionary of the state, and if he be not such, with imprisonment."

"If the war be not declared, and if the vexations or reprisals be not carried into effect, the respective penalties shall be of the degree immediately below."

ART. 154. "Whosoever shall, without sufficient authority, have levied troops within the kingdom for the service of any foreign power, whatever may be his object or the nation against which he intends to commit hostilities, he shall be punished with imprisonment and fined
[460] from *500 to 50,000 pesetas."

"If any person whosoever shall, without sufficient authority, have fitted out privateers, he shall be punished with temporary reclusion and fined from 2,500 to 25,000 pesetas."

Permitting the levying of an armed force in a country for the benefit of some power may be in itself an act of more or less open hostility toward another nation. The crime of levying troops for exciting an insurrection within the kingdom is not embraced in this provision, because it is considered as being a crime committed against the domestic safety of the country.

CHAPTER IV, (pp. 246, 247.)

ART. 155. "The crime of piracy committed against Spaniards, o against the subjects of another nation which is not at war with Spain shall be punished with temporary or perpetual irons."

"When the crime shall have been committed against non-belligeren subjects of a nation at war with Spain, the penalty shall be the gal leys."

This offense, which was formerly forbidden under the preceding chap ter, is one of the most odious which can be committed; it endangers th safety of private persons, stops the maritime intercourse and all me cantile transactions. The very place where the offense is committe makes it still more alarming and fearful. It is to be noticed tha
[461] there is no penalty denounced against the offense *when commi ted for the injury of foreigners at war with Spain. The statute of all countries have adopted this restriction, on the principle that it i not unlawful to cripple an enemy on land and on the seas, not only b means of regular armies, but also by means of forces commanded b private persons, to whom letters of marque have been issued. Th amended statute considers piracy as being a crime, and denounce against it a severe penalty, when committed against non-belligerent su jects; but duly authorized privateering is lawful, if against belligerent and is not to be mistaken for piracy.

[462] *No. 2.—CASE OF THE STONEWALL.

Mr. Perry, United States chargé d'affaires, to Mr. Seward, Secretary of State.

LEGATION OF THE UNITED STATES,
Madrid, February 4, 1865.

SIR: I received last night a telegram from our consul at Vigo, informing me that a confederate pirate steamer had entered the port of Corunna for repairs. He gives the vessel's name Stonewall, but I received also private advice, late last night, that the ship is the Shenandoah. Copies of these documents go inclosed, as well as another from the consular agent at Corunna, which I at first supposed to refer to some blockade-runner, and treated accordingly. Before daylight to-day the inclosed telegrams had been sent to the consul at Vigo, to the consular agent at Corunna, to the minister of the United States at London, to the chargé d'affaires at Paris, to the minister at Lisbon, and to the consuls at Cadiz and Gibraltar. I trust that from some one of these points a Government cruiser can be notified in time to block the egress of the pirate from the bay. I have also written the note to Mr. Benavides, of which a copy goes inclosed, and as soon as the hour permitted this morning sought him at his own house and placed the note in his hands.

I showed him also the account given by our own consul at Teneriffe, on the 29th October last, of the operation [463] *effected between the Laurel and the Sea King, since Shenandoah or Stonewall, and the royal decree of June 17, 1861, and copies of the telegrams I had sent to our consuls. And I said, also, that I had not wished to indicate in my note any step to be taken by Her Majesty's government in preference to another, but I had made a statement of the facts as I understood them, and prefer to leave to the spontaneous action of Her Majesty's government the proper remedy. I did not, however, myself see how Spain could ever permit that vessel to leave her ports again as a privateer. The article first of the royal decree of June 17 could have but one meaning, and though my government had made no reclamation against Spain for the first arming and equipping of this pirate in her waters, unbeknown to her authorities, yet, now that the vessel had come again within her jurisdiction, and within the power of her authorities, if she were again allowed to depart, could not fail to be the motive of grave reclamation from the Government at Washington.

Mr. Benavides said, what you wish, then, is that we should disarm the corsair? I said, what would you do if an armed force engaged in insurrection in France should pass the Spanish frontier? Mr. Benavides replied, we should take away their arms.

I then asked if there was any motive why this corsair should [464] be treated otherwise? Mr. Benavides *said, in his own opinion, there was not; and, besides, this particular ship seems to be doubly guilty.

I added that, in my opinion, she must at least be disarmed completely, both under the dictates of international law and the provisions of the municipal law of Spain. Mr. Benavides took my note and said that he would attend to the affair immediately, and have it set right this day. I shall advise you hereafter what course is taken by this government.

With the highest respect, sir, your obedient servant,

HORATIO J. PERRY.

HON. WILLIAM H. SEWARD,
Secretary of State, Washington.

Mr. Benavides, minister of foreign affairs, to Mr. Perry, United States chargé d'affaires.

[Translation.]

DEPARTMENT OF STATE,
Madrid, Palace, February 12, 1865.

SIR: I have received your two notes of the 5th and 9th instant, in which, after informing me of the arrival of the iron-clad steamer Stonewall, with three guns, 300 horse-power, and seventy-nine men, at the port of Ferrol, you request the government of Her Majesty the Queen not to permit the said vessel to repair nor to take coals and provisions, only enough to last her while in this port.

In the present case the government of Her Majesty must adhere to the
decree of the 17th of June, 1861, the object of which was to pre-
[465] vent Spaniards from interfering *in the struggle now going on in
the United States, as all private interest is stimulated by the hope
of gain. It was to be feared they would take part on either side.

In consequence of this the government of Her Majesty has ordered instructions to be given to the captain-general of the department of Ferrol not to permit other than necessary repairs to the steamer Stonewall, to be determined by the commander of engineers, so as to make her sea-worthy, but not to improve or increase her sea fitness or military efficacy.

In reference to your remarks about the arrival of the Stonewall at Ferrol, I must say she came with papers in due form, without the least indication that she wished to take on articles contraband of war; whereas examinations of her damages show she put in under stress, for certain safety.

This being the case, the government of Her Majesty could not disregard the voice of humanity in perfect harmony with the laws of neutrality, and does not think they are violated by allowing a vessel only the repairs strictly necessary to navigate without endangering the lives of the crew.

I hope you will be satisfied with these lawful reasons for the resolution in regard to the Stonewall, and will accept the assurances of my most
distinguished consideration.
[466] *A. BENAVIDES.

The UNITED STATES CHARGÉ D'AFFAIRES.

Mr. Perry, United States chargé d'affaires, to Mr. Seward, Secretary of State.

[Extract.]

LEGATION OF THE UNITED STATES,
Madrid, February 20, 1865.

SIR: On Friday, the 17th instant, Mr. Mercier sent to the Spanish minister of state (Mr. Benavides) a little note, inclosing a telegraphic instruction from Mr. Drouyn de Lhuys to Mr. Mercier, informing him that a *commission rogatoire* had issued from the French government to inquire into the circumstances of the abduction of several French sailors by the Stonewall, as was alleged, against their will, and directing him to request the Spanish government to detain that ship until this busi ness could be settled. I saw the original note and the telegram as it was deciphered and sent to the Spanish state department.

With sentiments of the highest respect, sir, your obedient servant,

HORATIO J. PERRY.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

Mr. Perry, United States chargé d'affaires, to Mr. Seward, Secretary of State.

[467] *[Extract.]

LEGATION OF THE UNITED STATES,
Madrid, February 25, 1865.

SIR: I have the honor to transmit, inclosed, the translation of Mr. Benavides's note to me of the 21st instant, in reply to mine of the 18th instant, which was forwarded as inclosure C of dispatch No. 168, of February 20. This note confirms the result announced to you in that dispatch. Last night in company I saw Mr. Benavides and inquired of him if this note was intended to be the end, or whether repairs on the Stonewall would ever be recommenced in this jurisdiction. Mr. Benavides said no, that this was the end of repairs on that ship, and that such was the meaning of his note.

With sentiments of the highest respect, sir, your obedient servant,

HORATIO J. PERRY.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

[Inclosure.]

Mr. Benavides, minister of foreign affairs, to Mr. Perry, chargé d'affaires.

[Translation.]

DEPARTMENT OF STATE,
Madrid, Palace, February 21, 1865.

SIR: I have had the honor to receive your note of the 18th in- [468] stant, in which you are so good as to *manifest to me, referring to telegraphic dispatches of the consular agent of the United States at Ferrol, that after the termination of the repairs on the iron-clad steamer Stonewall this vessel is still not in a condition to take the seas, because of certain radical defects of construction which you solicit may not be permitted to be remedied in the ship-yard of the said port of Ferrol, nor in any other in Spain.

The reasons which you present in support of your wishes have been duly appreciated by the government of the Queen, which, being convinced of its duty not to separate its conduct from the line marked out for it in the royal decree of June 17, 1861, has dictated the proper orders that it be thus done in the case to which you refer.

The minister of marine, confirming the orders previously communicated, that the repairs which might be made on the Stonewall should not be such as to better her military or sea-going qualities, has instructed the naval

authority at Ferrol to strictly comply with those orders, and not to permit any other work on the said vessel than that qualified by
[469] the commandant of naval engineers *as indispensable to repair the particular damage which obliged her to come into the port where she now is.

I take pleasure in believing that you will find this resolution of Her Majesty's government in accordance with the suggestion of the note to which I reply, and I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

A. BENAVIDES.

The CHARGÉ D'AFFAIRES *of the United States.*

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[470] ******Mr. Perry, United States chargé d'affaires, to Mr. Benavides, minister of foreign affairs.*

MADRID, *March* 7, 1865.

SIR: I have the honor to inclose copy of a dispatch received from the consul of the United States at Liverpool, which informs me that about thirty men, formerly belonging to the pirate-ship Florida, engaged in the military service of the rebel faction now in insurrection in the United States, are, or soon will be, on their way to join the iron-clad vessel Stonewall now at anchor at the port of Ferrol. For this purpose it was supposed they would be sent by steamer from Calais to some port in Spain, but it is also very possible that they may proceed by land from that place to Ferrol.

In laying these facts before your excellency I have to beg that the proper orders be issued to Her Majesty's authorities on the frontiers of France and Portugal, and at all the ports on the Atlantic coast, not to permit the entrance into Spain of these men in the military service of the so-called Confederate States for the purpose of joining the armed expedition preparing aboard the Stonewall to make war upon the United States, but to impede their journey in that direction, and separate them effectually from that port. I beg also that renewed orders may be given to the authorities at Ferrol, in view of these facts, to prevent by every means in the power of Her Majesty's government the joining of
[471] more men to *this armed expedition aboard the steamer Stonewall, whether they present themselves singly or in bands, coming by sea or land to that port.

And I avail myself of this occasion to renew to your excellency the assurance of my most distinguished consideration.

HORATIO J. PERRY.

His Excellency the MINISTER OF STATE *of Her Catholic Majesty.*

The military governor of Ferrol to the consular agent of the United States.

[Translation.]

In reply to your communication of the 7th instant, I have ordered the commandant sergeant-major of this fortified place to pass on board the confederate brig Stonewall, and claim of her commander the individuals belonging to the English ship Cleodon moored in this ship-yard of the Grava; having answered the former that not one of said individuals had enlisted in the vessel under his command, and that, in observance of neutrality, of the seventy-nine men of the crew with which she entered port the said brig now lacked two. And I have the pleasure to transmit this to you in reply to your said communication.

God guard you many years.

The brigadier-governor,

JOSÉ DE LA ZENDIFA.

FERROL, *March* 10, 1865.

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[472] **Mr. Benavides, minister of foreign affairs, to Mr. Perry, United States chargé d'affaires.*

[Translation.]

DEPARTMENT OF STATE,
Palace, Madrid, *March* 21, 1865.

SIR: Reserving the privilege to communicate to you whatever the authorities of the Ferrol may reply hereafter with respect to the fraudulent increase of the crew of the corsair Stonewall, to which your notes of the 7th instant refer, I have the honor now to communicate that the captain-general of that marine department said, in a telegram the day before yesterday to the minister of marine, that the Stonewall had not enlisted any men at all.

I avail myself of this occasion to renew, &c., &c.

A. BENAVIDES.

The CHARGÉ D'AFFAIRES *of the United States.*

Mr. Benavides, minister of foreign affairs, to Mr. Perry, United States chargé d'affaires.

[Translation.]

DEPARTMENT OF STATE,
Madrid, *Palace*, *March* 22, 1865.

SIR: I have the honor to reply to your note of yesterday relative to the enlistment of seamen, which, it is said, the confederate steamer Stonewall has effected at the Ferrol; that the same day I transferred it to the minister of marine for him to [473] *adopt the proper measures to procure that the commander of said vessel should set on shore the men which it seems he has fraudulently embarked.

I avail myself of the occasion, &c., &c.

A. BENAVIDES.

The CHARGÉ D'AFFAIRES *of the United States.*

Mr. Perry, United States chargé d'affaires, to Mr. Benavides, minister of foreign affairs.

[Translation.]

MADRID, *March* 23, 1865.

SIR: I have just learned that yesterday and to-day, after two attempts which the vessel Stonewall has made to leave the bay, finding that her sea-going qualities do not permit her to sustain the movement of a heavy sea, she has returned again to the port of Ferrol, and will seek to obtain from Her Majesty's authorities permission to make the repairs which she needs.

Your excellency will call to mind the note which I had the honor to address you on the 18th of last month, and that in which your excellency was pleased to reply, dated the 21st of the same month, as well as the verbal confirmation you gave me, saying that the Stonewall would not be permitted to do any more work or repairs in the Span- [474] ish ship-yards than those repairs which she had already *terminated. I had the satisfaction to transmit these assurances immediately to the Government at Washington, thus attenuating the importance of the conflict marked by my protest of the 9th of February, which made the government of Her Catholic Majesty responsible for the consequences which might follow from the grant of repairs of this vessel. I now come to inform your excellency that, in effect, the constructor of the Stonewall came from Bordeaux to Ferrol, and after an examination of the vessel indicated the work which was to be done, for which he said that the ship ought to apply to enter any dock. I had also the resolution arrived at, relative to this work by the so-called Commander Barron, commanding this naval department of the Confederate States of America, whose headquarters are at Paris, where Captain Page, of the Stonewall, repaired to consult upon this business.

The movements of the Stonewall recently, to show that she cannot keep the sea in the state in which she now is, are clearly connected with these antecedents, and we ought to expect immediately her demand to Her Majesty's authorities to be permitted to begin the work. But I rely in complete security upon the good faith of Her Majesty's government, and since the assurances which your excellency has been pleased to [475] give me by word and writing, I know that *no work of repairs whatever will be permitted to this vessel, within this jurisdiction, besides the repairs she already received in February, and that if her sea-going qualities will not permit her to keep the sea with heavy weather, she will have no resource but to wait for better weather and a sea more adapted to her bad condition.

In this connection I avail myself of the occasion to renew to your excellency the assurance of my most distinguished consideration.

HORATIO J. PERRY.

Mr. Benavides, minister of foreign affairs, to Mr. Perry, United States chargé d'affaires.

[Translation.]

DEPARTMENT OF STATE,
Madrid, Palace, March 24, 1865.

SIR: I have the honor to inform you that as soon as I received your note of yesterday relative to the confederate steamer Stonewall, I communicated it to the minister of marine, charging him that under no pretext should he permit any work whatsoever to be done on said vessel.

I avail myself of this occasion to renew, &c., &c.,

A. BENAVIDES.

The CHARGÉ D'AFFAIRES *of the United States.*

[476] ****Mr. Benevides, minister of foreign affairs, to Mr. Perry, United States chargé d'affaires.***

DEPARTMENT OF STATE,
Madrid, Palace, April 1, 1865.

SIR: I have the honor to inform you that, according to the report given by the captain-general of the department of Ferrol, to the minister of marine, the Stonewall left that port on the 24th of March last, at half-past 10 o'clock in the morning, accompanied by Her Majesty's frigate Conception.

At noon the frigate being within the following limits: Cape Prior, north 53° east, Corunna light, south 32° east, and the Stonewall about one mile ahead, about west-northwest of the meridian, the Conception stopped her engine, lowered and raised her ensign, with a cannon-shot, to signify to the confederate vessel the extent of the jurisdictional zone, and then steamed back slowly to the mouth of the port of Ferrol, where she remained to watch the movements of the Stonewall, which vessel came back about 2 p. m., hoisting Spanish colors at the foretop as a signal for communication.

The commander of the Conception says:

> They sent the mate to me to ask permission to return to the entrance of the [477] harbor and communicate with shore. I refused permission, and said as *they had repaired damages, and gone out without new accidents, they could continue on their course. The boat went back, but soon returned, insisting on the demand. I again refused, and added that it was an abuse of hospitality. I afterward steamed a little north of meridian, and finding the Stonewall nine or ten miles north, at 4 o'clock I returned to this port, (Ferrol,) where I anchored at half-past 4.

In communicating to you these details, as another proof of the desire of the government of the Queen my lady to comply strictly with the duties of neutrality imposed by the royal decree, and to preserve and cultivate the good relations existing between Spain and the United States, I repeat the assurance of my distinguished consideration.

A. BENAVIDES.

The UNITED STATES CHARGÉ D'AFFAIRES.

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[478]

*VI.—SWITZERLAND.

No. 1. Code pénal fédéral.
No. 2. Notification concerning neutrality, 1859.
No. 3. Neutrality ordinance, 1859.
No. 4. Report on neutrality, 1859.
No. 5. Foreign-enlistment act, 1859.
No. 6. Message of the federal council concerning the maintenance of neutrality, 1870.
No. 7. Neutrality ordinance, 1870.
No. 8. Message of the federal council concerning the maintenance of neutrality.

[480, 481]

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[482]

*No. 1.—CODE PÉNAL FÉDÉRAL.

[Extrait.]

SECONDE PARTIE.—*Des diverses espèces de crimes et de délits.*

TITRE II.—*Des crimes et des délits contre les états étrangers.*

ART. 41. Quiconque viole un territoire étranger, ou commet tout autre

acte contraire au droit des gens, est puni de l'emprisonnement ou de l'amende.

ART. 42. L'outrage public envers une nation étrangère ou son souverain, ou un gouvernement étranger, sera puni d'une amende qui peut être portée a fr. 2,000 et, dans des cas graves, être cumulée avec six mois au plus d'emprisonnement. Les poursuites ne peuvent toutefois être exercées que sur la demande du gouvernement étranger, pourvu qu'il y ait réciprocité envers la confédération.

ART. 43. L'outrage ou les mauvais traitements exercés envers le représentant d'une puissance étrangère accredité auprès de la confédération, sont punis de deux ans au plus d'emprisonnement et d'une amende qui peut s'élever à 2,000 francs.

[483] *ART. 44. La poursuite et le jugement des cas prévus aux articles 41, 42 et 43 n'ont lieu que sur la décision du conseil fédéral conformément à l'article 4 de la loi fédérale sur la procédure pénale du 27 août 1851. . . .

Ainsi décrété par le conseil national suisse.

Berne, le 3 février 1853.

Au nom du conseil national suisse.

Le Président, HUNGERBÜLER.
Le Secrétaire, SCHIESS.

Ainsi décrété par le conseil des états suisse.

Berne, le 4 février 1853.

Au nom du conseil des états suisse.

Le Président, F. BRIATTE.
Le Secrétaire, J. KERN-GERMANN.

No. 2.—NOTIFICATION DU CONSEIL FÉDÉRAL CONCERNANT LA NEUTRALITÉ DE LA SUISSE, (DU 14 MARS 1859.)

Bien que les états de l'Europe jouissent pleinement aujourd'hui des bienfaits de la paix, l'on ne saurait disconvenir que la confiance dans la stabilité de cet état de choses n'ait subi un ébranlement et qu'il [484] n'existe des motifs d'admettre *que la tranquillité générale pourra être troublée par la possibilité de graves événements.

Dans de telles conjonctures, la Suisse doit à sa dignité, à son caractère d'état indépendant et libre, comme à sa constitution politique et à son organisation, de se prononcer à temps et sans détour sur l'attitude qu'elle se propose d'observer en regard de certaines éventualités, suivant la position qui lui est faite par sa situation, son histoire, ses besoins intérieurs et ses rapports avec les états étrangers.

Le conseil fédéral le déclare donc de la manière la plus formelle, si la paix de l'Europe vient à être troublée, la confédération suisse défendra et maintiendra, par tous les moyens dont elle dispose, l'intégrité et la neutralité de son territoire, auxquelles elle a droit en sa qualité d'état indépendant, et qui lui ont éte solennellement reconnues et garanties par les traités européens de 1815. Elle accomplira loyalement cette mission envers tous également.

Les traités de 1815 déclarent, en outre, que certaines portions du territoire de la Savoie, qui font partie intégrante des états de sa Majésté le Roi de Sardaigne, sont comprises dans la neutralité suisse.

[485] *Il résulte en effet de ces traités, savoir: la déclaration des hautes

puissances du 29 mars 1815 et l'acte d'accession de la diète suisse du 12 août 1815, l'acte final du congrès de Vienne du 9 juin 1815, (Art. 92,) la paix de Paris du 20 novembre 1815, (Art. 3,) et l'acte du même jour portant reconnaissance et garantie de la neutralité perpétuelle de la Suisse et de l'inviolabilité de son territoire, que les parties de la Savoie désignées dans ces actes sont au bénéfice de la même neutralité que la Suisse, avec la clause spéciale que, "toutes les fois que les puissances voisines de la Suisse se trouveront en état d'hostilités ouvertes ou imminentes, les troupes de sa Majesté le Roi de Sardaigne qui pourraient se trouver dans les provinces neutralisées, se retireront et pourront, à cet effet, passer par le Valois, si cela devient nécessaire; qu'aucunes autres troupes armées d'aucune puissance ne pourront y stationner ni les traverser, sauf celles que la confédération suisse jugerait à propos d'y placer."

Les dispositions précitées des traités généraux ont été expressément confirmées dans tous leurs points par le traité spécial, qui a été conclu le 16 mars 1816, entre la confédération et sa Majesté le Roi de Sardaigne.

Si dès lors les circonstances le réclament, et pour autant que la mesure sera nécessaire pour assurer et défendre sa neutralité et [486] *l'intégrité de son territoire, la confédération suisse fera usage du droit qui lui a été conféré par les traités européens d'occuper les parties neutralisées de la Savoie. Mais il est bien entendu que si la confédération recourt à cette mesure, elle respectera scrupuleusement, et sous tous les rapports, les stipulations des traités, et entre autres celle qui dit que l'occupation militaire suisse ne portera aucun préjudice à l'administration établie par sa Majesté sarde dans les dites provinces.

Le conseil fédéral déclare qu'il s'efforcera de se mettre d'accord avec le gouvernement de sa Majesté le Roi de Sardaigne au sujet des conditions spéciales d'une telle occupation.

Le conseil fédéral se livre, en terminant, à l'espoir que ces déclarations, aussi franches que loyales, seront favorablement accueillies et que les hautes puissances sauront parfaitement apprécier le point de vue auquel il a dû se placer en présence de la situation politique actuelle et dans la prévision des éventualités qui peuvent surgir.

Il saisit avec empressement, etc.

BERNE, le 14 mars 1859.

Au nom du conseil fédéral suisse.

Le Président de la Confédération, STÆMPFLI.
Le Chancelier de la Confédération, SCHIESS.

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[487] *No. 3.—ORDONNANCE CONCERNANT LE MAINTIEN DE LA NEUTRALITÉ DE LA SUISSE, (DU 20 MAI 1859.)

Le conseil fédéral suisse, voulant assurer pour tous les cas le bon ordre sur les limites du théâtre de la guerre et prévenir tous les actes non-compatibles avec la position neutre de la suisse, se fondant sur l'article 90, chiffre 9. de la constitution fédérale, et sur l'arrêté de l'assemblée fédérale du 5 mai 1859, a arrêté les dispositions suivantes, qui sont publiées par la présente, pour que chaun ait à s'y conformer:

ART. 1. L'exportation d'armes, de poudre et de munitions de guerre en général par la frontière suisse-italienne est interdite, ainsi que tout rassemblement d'objets de cette nature dans la proximité de la dite frontière.

En cas de contravention, les marchandises seront mises sous séquestre.

ART. 2. Les armes et munitions qui seront apportées d'Italie sur territoire suisse par des réfugiés ou déserteurs, ou de toute autre manière, seront pareillement séquestrées.

[488] *Sont exceptés les armes de voyageurs pourvus de papiers réguliers ou de réfugiés qui se rendent immédiatement dans l'intérieur de la Suisse.

ART. 3. Il est interdit d'acheter ou en général de prendre possession d'armes, munitions et objets d'équipement apportés par des déserteurs par delà la frontière, et les objets de cette nature seront saisis lors même qu'ils seraient trouvés entre les mains de tierces personnes.

ART. 4. Les réfugiés ou déserteurs arrivant dans les territoires limitrophes italiens seront internés à une distance convenable. Le conseil fédéral fixera les limites de l'internement partout où cela sera nécessaire.

Sont exceptés les vieillards, les femmes, les enfants, les malades et les personnes dont on a des motifs suffisants d'admettre qu'elles se comporteront tranquillement.

Il ne sera toléré aucun réfugié ou déserteur quelconque sur le territoire au sud de Lugano, ainsi que sur celui qui s'étend entre la Tresa d'un côté et Lugano et Breno de l'autre. Sont exceptés les propriétaires de biens-fonds y situés, aussi longtemps qu'ils se comporteront tranquillement.

[489] Dans le cas où des réfugiés ou déserteurs *se concentreraient en trop grand nombre dans les districts situés en arrière, le conseil fédéral se réserve d'aviser ultérieurement.

Les réfugiés ou déserteurs qui ne se soumettent pas aux ordres des autorités, ou donneront d'ailleurs matière à des réclamations, seront immédiatement renvoyés.

ART. 5. Le passage de gens aptes au port d'armes par le territoire suisse pour se rendre du territoire de l'une des puissances belligérantes sur celui de l'autre est interdit. Les individus de cette catégorie seront envoyés dans l'intérieur de la Suisse, à moins qu'ils ne préfèrent retourner sur leurs pas.

ART. 6. Les gouvernements des cantons frontières Grisons, Tessin et Valois, ainsi que les commandants militaires en fonction, sont chargés de l'exécution de la présente ordonnance. Le département du commerce et des péages est chargé de l'exécution en ce qui concerne la circulation interdite d'armes et de munitions à la frontière.

Berne, le 20 mai 1859.

Le Président de la Confédération, STÆMPFLI.
Le Chancelier de la Confédération, SCHIESS.

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[490] No. 4.—RAPPORT DU CONSEIL FÉDÉRAL À L'ASSEMBLÉE FÉDÉRALE SUR LES MESURES PRISES DANS L'INTÉRÊT DE LA NEUTRALITÉ, (DU 1er JUILLET 1859.)

[Extrait.]

L'article 6 de l'arrêté que vous avez pris le 5 mai dernier, concernant la position neutre de la Suisse, porte que le conseil fédéral aura à rendre compte à la prochaine réunion de l'assemblée fédérale de l'usage qu'il aura fait des pleins pouvoirs à lui confiés en vertu du dit arrêté.

Nous avons l'honneur de nous acquitter de ce mandat en y joignant un exposé des événements qui, se rattachant à la situation politique de la Suisse, ont fourni matière à des négociations et à des correspondances.

Heureusement que les conjonctures n'ont pas été de nature à rendre nécessaire une convocation extraordinaire de l'assemblée fédérale.—*La France dans ses rapports avec les états neutres.*

Immédiatement après l'ajournement des conseils législatifs, la légation de France nous fit, au nom de son gouvernement, une communication spéciale sur la ligne de conduite que la France, prenant pour [491] base les principes du *congrès de Paris d'avril 1856, se proposait de suivre à l'égard des états neutres pendant la guerre actuelle. Il résulte de ces ouvertures que les commandants des forces de terre et de mer ont reçu pour instruction de respecter rigoureusement les droits des territoires et du commerce des états neutres; on exprimait en même temps l'attente que, par une juste réciprocité, la Suisse observerait exactement pendant la durée de la guerre les devoirs d'une stricte neutralité. Cette déclaration pouvait être considérée comme une nouvelle confirmation de ce que la Suisse avait constamment désiré vis-à-vis de ses voisins, savoir, l'observation d'une stricte neutralité, devant diriger toute sa conduite, ainsi qu'il est exposé en détail dans la circulaire du 14 mars. . . . . .

Dans le canton du Tessin, la surveillance des nombreux réfugiés venant d'Italie devait réclamer à un haut degré l'attention des autorités. Il était pareillement indispensable d'aviser à des mesures sur la circulation d'armes et de munitions. Les dispositions que nous avons jugé devoir ordonner successivement se trouvent résumées dans la publication qui a paru le 20 mai. On y interdisait la sortie d'armes, de [492] poudre, *de munitions par la frontière suisse-italienne, ainsi que tout rassemblement d'objets de cette nature à proximité de la frontière, sous peine de confiscation en cas de contravention.

Les armes et les munitions qui seraient apportées d'Italie sur territoire suisse, soit par des réfugiés et des déserteurs ou de toute autre manière, devaient aussi être saisies. Étaient exceptées de cette mesure les armes de voyageurs munis de papiers réguliers ou de réfugiés qui se rendraient immédiatement dans l'intérieur de la Suisse.

L'achat et en général la prise de possession d'armes, munitions et objets d'équipement qui seraient apportées en deçà de la frontière furent interdits et ordre était donné de séquestrer de tels objets.

Le passage fut interdit aux individus aptes au port d'armes qui voudraient emprunter le territoire suisse pour se rendre du territoire d'une des puissances belligérantes sur celui de l'autre. Ces gens devaient être consignés dans l'intérieur de la Suisse, à moins qu'ils ne préférassent retourner là d'où ils venaient. Ces dispositions sont absolument conformes au principe de la neutralité proclamé et n'ont pas besoin d'autre justification. La défense mise sur le transport d'armes et de mu- [493] nitions *est fondée sur le droit des gens, et il était pareillement indispensable de tenir les réfugiés sous une stricte surveillance et de ne pas permettre qu'ils abusassent de l'asile qui leur était libéralement accordé, pour menacer les parties belligérantes ou rendre plus difficile la surveillance des frontières par nos propres troupes. Notre commandant de division, que, dans l'intérêt de l'unité d'action, nous avions chargé du maintien de la police des réfugiés, reçut pour instruction de procéder avec humanité et d'avoir égard aux circonstances particulières, et nous pouvons certifier qu'à cet égard il a été fait tout ce que l'on pouvait raissonablement demander dans des conjonctures aussi difficiles; naturellement on n'a pu éviter que certaines mesures fussent trouvées trop rigoureuses par la population intéressée, qui n'était pas à même d'apprécier impartialement la position de la Suisse dans ses rapports internationaux. Pour prouver à quel point il a été tenu compte des circonstances particulières, il suffit du fait qu'aucun réfugié de la classe civile n'a été consigné dans l'intérieur de la Suisse, et qu'ils ont tous pu rester dans le canton du Tessin, en se tenant, comme il s'entend de soi-même, à une distance convenable de l'extrême frontière.

[494] . . Dans notre office nous rappelions que la *Suisse avait souffert vivement des capitulations militaires pendant une longue série d'années, et qu'après bien des luttes on était parvenu dans ces derniers temps á les supprimer, puisque aussi bien les constitutions cantonales que la constitution fédérale posent le principe qu'aucune capitulation militaire ne peut plus dorénavant être conclue. La législation fédérale a fait un pas de plus. Les 20 juin 1849, er 24 juillet 1855, elle a déclaré la continuation de l'existence des capitulations militaires incompatibles avec les bases politiques de l'organisation républicaine-démocratique de la Suisse, et en conséquence interdit sur tout le territoire de la confédération tous enrôlements pour le service militaire étranger. Elle a de plus, dans le code pénal fédéral, réprimé par l'emprisonnement et l'amende le recrutement d'habitants de la Suisse pour le service militaire étranger, prohibé et étendu cette commination aux employés des bureaux d'enrôlement établis hors de la Suisse, afin d'éluder la prohibition du recrutement sur territoire suisse.

Toutes ces dispositions ont été appliquées d'une manière aussi conséquente que possible; preuve en soit une série de jugements rendus contre des embaucheurs. Si partout les infractions n'ont pas été atteintes par le bras de la justice pénale, si la législation en vigueur n'a pu couper complétement court à l'abus des enrôlements, cela est dû à d'autres circonstances indépendantes des autorités fédérales. Tandis que la Susse
[495] et surtout les autorites fédérales font tout ce qu'elles *peuvent pour
empêcher les enrôlements sur le territoire de la confédération, quelques états voisins tolèrent sans aucune pudeur des bureaux de recrutement qui font en Suisse des enrôlements secrets. Toutes les fois qu'on a pu attendre quelque succès l'on a lié des négociations avec les états voisins, afin d'obtenir la suppression des bureaux d'enrôlement toléré. Ces efforts ont atteint leur but au moins en partie.

Nous saisissons cette occasion de vous réiterer Tit., l'assurance de notre parfaite considération.

Berne, le 1er juillet 1859.

Au nom du conseil fédéral suisse.

Le Président de la Confédération, STÆMPFLI.
Le Chancelier de la Confédération, SCHIESS.

No. 5.—LOI FÉDÉRALE CONCERNANT LES ENRÔLEMENTS POUR UN SERVICE MILITAIRE ÉTRANGER, (DU 30 JUILLET 1859.)

L'assemblée fédérale de la confédération suisse, sur le vu d'un rapport et préavis du conseil fédéral, arrête:

ART. 1. Il est interdit aux citoyens suisses de prendre du servic
[496] militaire à l'étranger dans *un corps de troupes qui n'appartien
pas a l'armée nationale du pays, sans l'autorisation du consei fédéral.

Cette permission ne peut être accordée par le conseil fédéral qu'e vue de l'instruction militaire, et pour mettre celui qui l'a obtenue à mêm de rendre des services dans l'armée fédérale.

ART. 2. Tout Suisse qui contreviendra aux dispositions de l'article 1e sera puni d'un emprisonnement d'un à trois mois et de la privation d ses droits politiques pour un temps qui ne pourra excéder cinq ans. (Articles 4 et 7 du code pénal fédéral du 4 févriér 1853.)

Cet article ne déroge en rien aux dispositions pénales particulières que les lois fédérales ou cantonales statuent contre les citoyens qui, astreints au service militaire, quittent le pays sans permission ou ne répondent pas à l'appel de la patrie.

Art. 3. Quiconque pratique sur le territoire de la confédération des enrôlements pour le service étranger ou prête son concours aux opérations des bureaux de recrutement établis en dehors de la Suisse, dans le but d'éluder la défense d'enrôler sur territoire suisse ou qui coopère sciemment à ces enrôlements d'une manière quelconque, par exemple en acceptant [497] *des demandes de service, en tenant des bureaux d'adresses, en payant des frais de voyage, en fournissant des feuilles de route ou des recommendations, sera, selon le degré de sa co-opération, puni d'un emprisonnement de deux mois à trois ans, d'une amende que peut être portée à 1,000 francs et de la privation de ses droits politiques jusqu'à dix ans.

Si le délinquant s'est engagé par une convention à former pour le service d'un état étranger un corps de troupes composé en entier ou en partie de ressortissants suisses, l'emprisonnement peut être porté à cinq ans, l'amende à 10,000 francs et la privation des droits politiques à dix ans.

Art. 4. Si les autorités de quelques cantons n'exécutent pas les prescriptions des lois fédérales contre le service militaire à l'étranger, le conseil fédéral nantira la juridiction pénale de la confédération pour autant qu'il est nécessaire en vue d'assurer une égale application de ces lois dans toutes les parties de la Suisse.

Art. 5. L'article 65 du code pénal fédéral du 4 février 1853 et la lettre *d* de l'article 98 du code pénal, pour les troupes fédérales du 27 août 1851, sont abrogés et remplacés par la présente loi.

[498] **Art.** 6. Cette loi entre immédiatement *en vigueur.

Le conseil fédéral est chargé de son exécution.

Ainsi arrêté par le conseil national suisse.

Berne, le 30 juillet 1859.

Le Président, PEYER IM HOF.
Le Secrétaire, SCHIESS.

Ainsi arrêté par le conseil des états suisse.

Berne, le 30 juillet 1859.

Le Président, F. BRIATTE.
Le Secrétaire, J. KERN-GERMANN.

Le conseil fédéral décrète:

La loi fédérale ci-dessus sera mise à exécution.

Berne, le 3 août 1859.

Le Président de la Confédération, STÆMPFLI.
Le Chancelier de la Confédération, SCHIESS.

No. 6.—MESSAGE DU CONSEIL FÉDÉRAL À LA HAUTE ASSEMBLÉE FÉDÉRALE CONCERNANT LE MAINTIEN DE LA NEUTRALITÉ PENDANT LA GUERRE ENTRE LA FRANCE ET L'ALLEMAGNE, (DU 28 JUIN 1871.)

[Extrait.]

[499] . . . . *Au point de vue de la police, la défense de la neutralité n'a plus offert de difficultés particulières depuis notre dernier rapport, du 8 décembre 1870. Nous avons vu diminuer les essais de con-

trebande d'armes et de munitions, grâce à un contrôle rigoureux et aux nombreux séquestres d'armes qu'on soupçonnait être destinées à l'exportation, parce qu'elles se trouvaient tout près de la frontière et que, pour la plupart, elles portaient de fausses déclarations. D'un autre côté, ces séquestres ont donné lieu à quelques réclamations; on les représentait comme des atteintes portées à la liberté d'industrie garantie par la constitution. Mais il est évident qu'on ne pouvait, pour opérer ses saisies, attendre que les armes et les munitions eussent déjà franchi la frontière ou s'en trouvassent si rapprochées qu'il fut impossible d'en empêcher la sortie, surtout sur les points de la frontière qui sont traversés par un chemin de fer. Toutefois, afin de pouvoir réparer promptement toute erreur éventuelle, les personnes intéressées ont toujours eu le droit de présenter de suite leur réclamation; mais on a pu presque chaque fois constater qu'on avait bien à faire à des tentatives de contrebande et que malgré toute la vigilance désirable il était impossible d'empêcher toutes les expórtations défendues. . . .

[500] *La coopération du département du commerce et des péages pour l'exécution de l'ordonnance du conseil fédéral concernant la neutralité de la Suisse, en date du 16 juillet 1870, s'est bornée en réalité à l'interdiction du commerce d'armes et de matériel de guerre. Les mesures prises pour surveiller l'exportation des chevaux, en exécution de l'élévation de la taxe d'exportation décrétée par le conseil fédéral, avait en plutôt trait aux préparatifs militaires de la confédération qu'un maintien de la position neutre de la Suisse entre les deux puissances belligérantes.

Dans son rapport du 11 novembre, le département avait présenté au conseil fédéral un tableau sommaire des saisies d'armes et de matériel de guerre exécutées par l'administration des péages.

Le tableau ci-joint renferme la liste de toutes les saisies de ce genre opérées depuis la décision du conseil fédéral du 16 juillet jusqu'à la levée de cette mesure, en date du 3 mars dernier. Le résultat prouve que le personnel de l'administration des péages s'est acquitté avec activité et persévérance de cette tâche ingrate, et qu'en général il a été
[501] fait sous ce rapport tout ce qu'il était possible d'obtenir en *égard aux grandes difficultés auxquelles faisait déjà allusion le rapport du département en date du 11 novembre 1870. . . . .

Berne, le 28 juin 1871.

Au nom du conseil fédéral suisse.

Le Président de la Confédération, SCHENK.
Le Chancelier de la Confédération, SCHIESS.

No. 7.—ORDONNANCE CONCERNANT LE MAINTIEN DE LA NEUTRALITÉ DE LA SUISSE, (DU 16 JUILLET 1870.)

Le conseil fédéral suisse, voulant prévenir tous les actes non-compatibles avec la position neutre de la Suisse, se fondant sur l'article 90, chiffre 9, de la constitution fédérale, a arrêté les dispositions suivantes, qui sont publiées par la présente, pour que chacun ait à s'y conformer :

ART. 1ER. Les troupes régulières, ainsi que les volontaires des états belligérants, qui tenteraient de pénétrer dans le territoire de la confédération ou de le traverser en corps ou isolément, seront en cas de besoin repoussés par la force.

[502] *ART. 2. L'exportation d'armes et de matériel de guerre en général dans les états voisins belligérants est interdite, ainsi que tout rassemblement d'objets de cette nature dans la proximité des frontières respectives.

En cas de contravention, les marchandises seront mises sous séquestre.

Art. 3. Les armes et le matériel de guerre qui seront apportées des états belligérants sur territoire suisse par des réfugiés ou déserteurs, ou de toute autre manière, seront pareillement séquestrés.

Art. 4. Il est interdit d'acheter ou en géneral de prendre possession d'armes, de matériel de guerre et d'objets d'équipement apportés par des déserteurs par delà la frontière, et les objets de cette nature seront saisis lors même qu'ils seraient trouvés entre les mains de tierces personnes.

Art. 5. Les réfugiés ou déserteurs arrivant sur territoire suisse seront internés à une distance convenable. Pour le cas où leur nombre serait considérable, il en sera immediatement donné connaissance au conseil fédéral, qui avisera aux mesures nécessaires.

Sont exceptés les femmes, les enfants, les malades et les personnes très, âgées et celles dont on a des motifs suffisants d'admettre qu'elles se comporteront tranquillement.

[503] *Les réfugiés ou déserteurs qui ne se soumettront pas aux ordres des autorités, ou donneront d'ailleurs matière à des réclamations, seront immédiatement renvoyés.

Art. 6. Le passage de gens aptes au port d'armes par le territoire suisse pour se rendre du territoire de l'une des puissances belligérantes sur celui de l'autre est interdit. Les individus de cette catégorie seront envoyés dans l'intérieur de la Suisse, à moins qu'ils ne préfèrent retourner sur leurs pas.

Art. 7. Les gouvernements des cantons frontières, ainsi que les commandants militaires en fonction, sont chargés de l'exécution de la présente ordonnance; le département du commerce et des péages est chargé de l'exécution en ce qui concerne la circulation interdite d'armes et de matériel de guerre à la frontière.

Berne, le 16 juillet 1870.

Au nom du conseil fédéral suisse.

Le Président de la Confédération, D^{r}. J. DUBS.
Le Chancelier de la Confédération, SCHIESS.

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[504] *No. 8.—MESSAGE DU CONSEIL FÉDÉRAL À LA HAUTE ASSEMBLÉE FÉDÉRALE CONCERNANT LE MAINTIEN DE LA NEUTRALITÉ SUISSE PENDANT LA GUERRE ENTRE LA FRANCE ET L'ALLEMAGNE, (DU 8 DÉCEMBRE 1870.)

[Extraits.]

Monsieur le Président et Messieurs: L'article 6 de l'arrêté fédéral du 16 juillet dernier, relatif au maintien de la neutralité de la suisse, est ainsi conçu:

> Le conseil fédéral rendra compte à l'assemblée fédérale, dans sa prochaine réunion, de l'usage qu'il aura fait des pleins pouvoirs qui lui sont conférés par le présent arrêté.

Le conseil fédéral a l'honneur de s'acquitter de ce mandat en vous soumettant le présent rapport, et, dès l'abord, il constate avec plaisir que jusqu'à présent la neutralité suisse n'a point été mise en question par les états belligérants.

Les mesures à prendre en vue du maintien de notre neutralité ont fort occupé le conseil fédéral et ses départements. Nous mentionnerons ces mesures dans l'ordre des départements qui en ont pris l'initiative, mais, afin de lier les idées, nous récapitulerons d'abord brièvement les faits antérieurs à l'arrêté fédéral.

[505] Dès les premiers symptômes du conflit entre la France et la Prusse à propos de la candidature au trône d'Espagne, nous avons eu soin de nous tenir autant que possible au courant de la situation, soit par nos légations, soit par d'autres sources que nous avions à notre disposition. Les rapports qui nous parvînrent ne retardèrent pas à nous convaincre qu'il n'était plus possible de songer à une solution pacifique du différend, et, dès le 14 juillet, nous prîmes les dispositions nécessaires pour que la Suisse se trouvât prête à défendre sa neutralité au moment où la guerre éclaterait. . . . .

Nous avons eu déjà l'occasion de faire connaître à l'assemblée fédérale les contre-déclarations de la France (du 17 juillet) et de l'Allemagne du Nord, (du 20 juillet,) ainsi que la notification provisoire de la neutralité suisse, du 15 juillet, (feuille fédérale de 1870, tome 3, pp. 11, 12 et 13.) Les gouvernements de la France et de l'Allemagne du Nord, ainsi que ceux des autres états belligérants, répondirent également à notre notification du 18 juillet, en reconnaissant d'une manière absolue la neutralité suisse et en donnant l'assurance qu'elles la respecteraient consciencieusement. Les autres puissances répondirent également
[506] à notre communication, les unes en *annonçant simplement qu'elles en avaient pris acte et les autres en exprimant de plus la satisfaction avec laquelle elles avaient accueilli cette notification.

Nous ne croyons pas faire erreur en disant que la mise sur pied de corps de troupes assez considérables et la rapidité avec laquelle ces troupes ont été mobilisées ont produit une excellente impression sur les deux parties belligérantes, qui ont pu acquérir ainsi la certitude que la Suisse avait la ferme intention de s'opposer à toute violation de sa neutralité et qu'elle possédait à cet effet des forces respectables. Ces mesures énergiques ont produit leur effet sur les événements ultérieurs et elles ont augmenté la calme et la confiance au dedans. . . . . .

De suite, après l'ouverture des hostilités un autre fait se présenta. Dès le 30 juillet on nous informa qu'il se faisait des *enrôlements* dans les cantons de Vaud et de Genève pour le compte de la France. En conséquence, nous adressâmes, sous la date du 1er août, une circulaire à tous les cantons, (feuille fédérale de 1870, tome 3, p. 137,) pour leur rappeler que ces enrôlements porteraient atteinte à la loi fédérale du 30 juillet 1859, sur le service militaire à l'étranger, (recueil officiel, 6,
[507] p. 300,) et qu'ils seraient de nature à compromettre la *neutralité de la Suisse dans les circonstances actuelles. En conséquence tous les cantons étaient invités à s'opposer énergiquement à toute tentative de recrutement.

Des bruits d'enrôlement de Suisses pour le service de la France nous sont parvenus encore sous une autre forme durant la guerre. On aurait enrôlé des individus à Genève pour une légion hanovrienne et aux frontières des cantons de Berne et de Neufchâtel pour le corps de Garibaldi; mais quand on est arrivé au fond des choses ces bruits ne se sont pas confirmés. Nous n'en avons pas moins donné des ordres pour que toute tentative de ce genre fût réprimée. Des mesures de police ont été prises avec beaucoup de vigueur contre des essais d'enrôlement, qui furent faits plus tard à Genève, mais qui, du reste, ont eu peu de succès. Par contre, nous avons appris qu'un certain nombre de soldats et officiers suisses licenciés à Rome avaient repris du service en France. En somme, nous ne croyons pas qu'il y ait eu jamais une grande guerre européenne à laquelle on ait vu aussi peu de Suisses prendre une part active. . .

Par suite de la proclamation de la république en France il parut à Neufchâtel un manifeste daté du 4 septembre 1870, et dont l'auteur
[508] s'adressait aux sections de l'internationale en Alle*magne, en

Suisse et partout, en appelant tous les socialistes à prendre les armes pour défendre la France républicaine contre l'Allemagne monarchique. On disait dans ce manifeste que ce n'était plus contre l'Empereur, mais bien contre l'indépendance du peuple français, que la guerre était dirigée; que la cause de la république française était celle de la révolution européenne; que, par conséquent, le moment était venu où les membres de l'internationale devaient verser leur sang pour l'émancipation de l'ouvrier et de l'humanité entière. Les membres allemands étaient invités a combattre la puissance militaire prussienne avec leurs frères de France. Quant aux membres suisses, ils devaient convoquer des assemblées populaires, faire une propagande active, attirer à eux tous les ouvriers, s'organiser, réclamer des armes, etc. Cet écrit se terminait par ces mots: Vive la république sociale universelle!

Après avoir pris connaissance de ce manifeste, nous nous empressâmes d'inviter, par circulaire du 10 septembre 1870, les autorités supérieures de police de tous les cantons à séquestrer de suite tous les
imprimés renfermant un appel à une participation active à la
[509] guerre actuelle, à empêcher les réunions et toute or*ganisation
armée faites dans ce but, et, cas échéant, à ordonner les mesures de précaution ainsi que les enquêtes nécessaires, aux termes des articles 13 et suivants du code pénal fédéral du 27 août 1851.

L'instruction que le conseil d'état du canton de Neufchâtel ouvrit de son propre chef prouva que le manifeste dont il s'agit n'avait aucune importance, et que si un certain nombre de cet écrit avaient été distribués en Suisse, ou même expédiés à l'étranger, ils n'avaient produit aucun effet. Ce manifeste avait même provoqué des protestations publiques de la part de la population ouvrière du canton de Neufchâtel.

Des tentatives réitérées d'envoyer en France des armes et des munitions donnèrent lieu à de nombreuses démarches. Ce ne fut qu'après la capitulation de Sédan que ces envois prirent un caractère sérieux. Il va sans dire que nous n'avons rien négligé pour nous opposer à ces tentatives publiques ou secrètes, et nous avons trouvé à cet effet un appui énergique dans les autorités et les fonctionnaires des cantons ainsi que dans le personnel des péages.

Par une circulaire spéciale du 20 septembre, nous avons attiré
[510] sur ces faits l'attention *de toutes les autorités de police des cantons,
et nous leur avons recommandé d'agir d'un commun accord avec les employés des péages fédéraux pour une surveillance efficace des frontières.

La preuve que nous avons atteint notre but se trouve dans le nombre considérable de séquestres mis sur des armes et des munitions, principalement dans les cantons de Neufchâtel, de Vaud et de Genève. On a pourvu partout à ce que le séquestre soit maintenu pendant toute la durée de la guerre actuelle.

Quelques renseignements relatifs à l'organisation de la contrebande de guerre sur une vaste échelle dans la Suisse occidentale nous ont engagés à envoyer sur place un commissaire spécial avec mission de l'enquérir du véritable état des choses. . . . .

Après avoir exposé en détail les mesures qu'il a prises en vue de la défense de la neutralité suisse, le conseil fédéral croit devoir terminer le présent rapport par quelques observations générales.

Le maintien de la neutralité présente de grandes difficultés, ne fût-
[511] ce déjà que parce qu'on ne possède pas de règles précises interna-
tionales sur les droits et les devoirs des neutres. On sait, par exemple, que l'Angleterre et l'Amérique du Nord*n'ont mis aucun empêchement à l'exportation des armes et des munitions destinés aux belligérants,

tandis que la Suisse a trouvé qu'elle ne pouvait concilier cette exportation avec sa manière de comprendre la neutralité. Bien que le commerce des armes en Suisse eut à souffrir de cette appréciation sévère des devoirs du neutre, le conseil fédéral a cru devoir persister dans cette interprétation, parce que, d'une part, elle est conforme à la ligne de conduite suivie dans des cas analogues, et que, d'autre part, elle se trouve plus en harmonie avec le sentiment populaire.

La position des neutres a toujours été difficile. Le neutre doit défendre son droit, et tenir la balance égale entre deux adversaires irrités l'un contre l'autre jusqu'à vouloir s'entre-tuer. Cette tâche excède presque les forces humaines. Depuis les anciens temps jusqu'à l'époque actuelle les combattants ont cherché à entraîner dans la lutte même les dieux immortels, et à les attirer de leur côté. Il n'est pas surprenant dès lors qu'ils s'efforcent de mettre dans leurs intérêts les états neutres, spectateurs de la lutte, et de s'assurer de ce qu'on appelle leur neutralité "bienveillante," qui, de l'autre côté, est taxée de neutralité "malveillante." La guerre actuelle a montré une fois de plus que les neutres sans exception s'attirent peu de reconnaissance.

La neutralité de la Suisse dans cette guerre était encore en-
[512] tourée de difficultés toutes *particulières. Nos plus proches
voisins se trouvaient en guerre l'un contre l'autre; après avoir perdu son caractère dynastique, cette lutte prît le caractère d'une guerre de races entre deux peuples représentant justement les deux principales races dont la Suisse est composée; en outre, elle parut revêtir l'apparence d'une guerre de la république contre la monarchie, et elle prît même çà et là un caractère confessionnel. Il n'est pas surprenant que dans de telles circonstances bien des gens en Suisse aient trouvé que leur propre cause était en jeu, que les sympathies se soient prononcées avec beaucoup de vivacité suivant le point de vue auquel on se plaçait, et que chez nous les cris de joie du vainqueur n'aient trouvé parfois que de très-faibles échos. La Suisse a été souvent exposée, à ce propos, à d'amers reproches d'un côté comme de l'autre. L'Allemagne du Sud ne pouvait comprendre pourquoi les Suisses allemands n'accueillaient pas avec une joie égale à la sienne la défaite de la France; et Garibaldi s'exprimait assez durement sur le fait que la Suisse ne portait pas secours à la nation française. Nous savons respecter ces sentiments, mais on doit aussi être juste vis-à-vis de la Suisse. La Suisse a fait de cruelles
expériences jusqu'à ce qu'elle se soit familiarisée avec l'idée de ne
[513] plus se mêler des querelles du *dehors; elle a choisi elle-même la
politique de la neutralité longtemps avant que l'Europe eût jugé à propos de sanctionner cette politique. Justement parce qu'elle est partagée quant aux races, aux religions et aux intérêts, elle ne peut intervenir activement dans les guerres entre les autres états sans provoquer de profondes déchirures dans son propre sein et sans paralyser ses forces, tandis qu'elle est forte dans la guerre défensive, parce que tous les éléments qui la composent se réunissent contre l'ennemi du dehors. La politique de la neutralité n'est donc point une loi imposée à la Suisse par l'étranger; elle est bien plutôt la conséquence de son organisation intérieure.

C'est pourquoi la Suisse a dans cette guerre manifesté le caractère particulier de sa nationalité en restant neutre. Mais elle n'a pas été un simple spectateur oisif et curieux de cette grande lutte; par son intervention diplomatique pour l'adoption des articles additionnels à la convention de Genève, par l'envoi d'un grand nombre de ses médecins sur les champs de bataille, par le soin qu'elle a pris des blessés des deux nations belligérantes et par les secours qu'elle a donnés simultané-

[514] ment aux Allemands expulsés et aux Strasbourgeois, elle a *montré qu'elle prenait une part active aux souffrances de ses voisins et elle a prouvé qu'elle savait remplir ses devoirs d'état neutre, non-seulement avec loyauté, mais encore avec humanité.

La Suisse neutre a eu, elle aussi, sa mission dans cette guerre. Il serait absurde de vouloir contester, au point de vue de la formation des états, l'importance du principe de la nationalité, basé sur la différence des races. Ce principe se fonde sur la nature même, et se trouve, par conséquent, justifié. Mais il est certain, d'autre part, que les diverses races ne doivent pas nécessairement vivre ensemble dans un état d'antagonisme, mais qu'au contraire, en se réunissant dans la liberté elles se complètent les unes par les autres, et qu'en définitive, au-dessus de la différence des races, il y a la communauté de la nature humaine. Ces dernières vérités seront de plus en plus généralement reconnues à mesure que la civilisation fera des pas en avant. En attendant, la Suisse, dont cette union des races est le caractère essentiel, a le devoir de veiller au maintien de son principe et de le faire prévaloir d'une manière digne au milieu des guerres de races; partout où elle le peut, elle doit s'efforcer de frayer la route à des appréciations plus humaines sur le [515, 516] terrain du droit des gens. C'est dans ce sens que le conseil *fédéral a compris la mission que la Suisse avait à remplir, et c'est à ce point de vue qu'il désire voir juger ses actes.

Le conseil fédéral espère que la Suisse pourra maintenir intacte sa position jusqu'à la fin de cette guerre terrible; et en exprimant à l'assemblée fédérale sa gratitude pour la confiance qu'elle lui a accordée lorsqu'elle lui a conféré des pouvoirs extraordinaires, le conseil fédéral saisit cette occasion, monsieur le président et messieurs, pour vous renouveler l'assurance de sa haute considération.

Berne, le 1er décembre 1870.

Au nom du conseil fédéral suisse.

Le Président de la Confédération, Dr. J. DUBS.
Le Chancelier de la Confédération, SCHIESS.

[517, 518] ADDITIONAL MEMORANDA TOUCHING NEUTRALITY LAWS AND THE EXECUTION THEREOF IN COUNTRIES OTHER THAN THE UNITED STATES AND GREAT BRITAIN.

[519] *VII.—DENMARK.

No. 1. Ordinance of May 4, 1803.
No. 2. Circular, May 20, 1823.
No. 3. Letter, April 20, 1854.
No. 4. Notice, July 25, 1870.
No. 5. General instructions.
No. 6. Extracts from penal code.
No. 7. Law of registration, 1867.

No. 1.—ORDONNANCE DU ROI, POUR RÉGLER LA CONDUITE ET FIXER LES OBLIGATIONS DES COMMERÇANTS ET GENS DE MER DE SES ÉTATS EN TEMPS DE GUERRE ENTRE D'AUTRES PUISSANCES MARITIMES, (LE 4 MAI 1803.)

Nous, Chrétien Sept, par la grâce de Dieu Roi de Dannemarc & de Norvégue, &c., &c., à tous ceux qu'il appartiendra :

[520] Quoique les règles d'après lesquelles les commer*çants et gens de mer, nos sujets, doivent se conduire en temps de guerre entre d'autres puissances maritimes, soient déterminées par plusieurs de nos ordonnances antérieures, nous avons néanmoins jugé nécessaire, dans les circonstances actuelles, d'exposer dans une seule ordonnance le contenu de ces règlements, modifié à plusieurs égards, et tel qu'il devra dorénavant servir de règle, afin que par la présente la plus grande publicité soit donnée aux principes invariables, d'après lesquels nous entendons maintenir en tout temps les droits des commerçants et gens de mer de nos états, et que personne ne puisse prétendre cause d'ignorance relativement aux devoirs qu'il aura à remplir comme sujet danois dans un cas semblable. En conséquence, c'est notre volonté royale que le règlement suivant soit dorénavant ponctuellement observé comme la seule règle de leur conduite par tous ceux qui voudront prendre part aux avantages que la neutralité de notre pavillon, en temps de guerre, assure au commerce et à la navigation légitime de nos sujets ; à ces causes, révoquant par la présente nos ordonnances antérieures relativement à la conduite de nos dits sujets pendant une guerre maritime étrangère, nous ordonnons et publions ce qui suit :

Art. 1. Quiconque des commerçants ou gens de mer de nos états voudra faire partir un vaisseau à lui appartenant, pour quelque port ou [521] place étranger, sur laquelle l'effet d'une *guerre survenue entre d'autres puissances maritimes pourra s'étendre, sera tenu de se procurer un passeport royal en latin, et les autres papiers et actes requis pour l'expédition légitime d'un navire. À cette fin nos sujets seront avertis, au commencement d'une pareille guerre, pour quels ports ou places étrangers on aura jugé nécessaire que leurs navires soient pourvus de notre passeport royal en latin.

Art. 2. Ce passeport ne pourra être délivré au propriétaire du vaisseau qu'après qu'il aura obtenu le certificat qui constate sa propriété.

Art. 3. Pour obtenir le certificat ordonné par l'article précédent, il faut être notre sujet, né dans nos états, ou avoir aquis, avant le commencement des hostilités entre quelques puissances maritimes de l'Europe, la jouissance complète de tous les droits de sujet domicilié, soit de nos pays, soit de quelqu'autre état neutre. Le propriétaire du navire pour lequel on demande le certificat devra, dans tous les cas, résider dans quelque endroit de nos royaumes ou des pays à nous appartenants.

ART. 4. Il faudra, pour se procurer le certificat ci-dessus énoncé, se présenter pardevant le magistrat de la ville ou place maritime d'où l'on
expédie le navire, ou bien du lieu de la résidence de la plupart
[522] des propriétaires; *ceux-ci seront tenus de certifier ou tous personnellement,
soit par serment de vive-voix, soit par formule de serment écrite et signée de leur propre main, ou du moins le propriétaire principal au nom de tous, que le navire est vraiment à eux, tous ensemble nos sujets, appartenant, & qu'il n'a à son bord aucune contrebande de guerre qui soit pour le compte des puissances belligérantes ou pour celui de leurs sujets.

ART. 5. Durant le cours d'une guerre maritime étrangère personne née sujet d'une des puissances qui s'y trouvent impliquées ne pourra être capitaine d'un bâtiment marchand naviguant sous notre passeport royal, à moins qu'il n'ait justifié d'avoir acquis le droit de burgeoisie dans nos royaumes ou pays, avant le commencement des hostilités.

ART. 6. Tout capitaine marchand qui veut être admis à conduire un navire muni de notre passeport royal doit avoir acquis le droit de bourgeoisie quelque part dans nos états. Sa lettre de bourgeoisie devra être en tout temps à bord de son navire. Avant son départ du port où le passeport lui aura été remis, il sera tenu de prêter serment, suivant la formule prescrite, qu'à son su & de sa volonté il ne sera rien commis ou
entrepris relativement au dit navire qui puisse entraîner quelque
[523] abus des passeports et certificats qui lui ont été délivrés. *L'acte
de serment sera envoyé au département, compétent, avec la requête pour la délivrance des passeports. Mais en cas que cela ne puisse deffectuer par raison s'absence du capitaine, le propriétaire du navire sera tenu d'en donner connaissance au dit département, & notre consul ou commissaire de commerce dans le district où le capitaine se trouve pourvoira sous sa responsabilité à ce qu'en recevant le passeport il prête le serment ordonné.

ART. 7. Il ne doit se trouver à bord des navires munis du passeport ci-dessus ordonné aucun subrécargue, facteur, commis ni autre officier de navire sujet d'une puissance en guerre.

ART. 8. La moitié de l'équipage des navires ci-dessus spécifiés, y compris les maîtres & contre-maîtres, sera composé de gens du pays. S'il arrive que l'équipage d'un navire devienne incomplet en pays étranger par désertion, mort ou maladie, & que le capitaine soit dans l'impossibilité de se conformer à la règle susdite, il lui sera permis d'engager autant de sujets étrangers, & de préférence ceux des pays neutres, qu'il en aura besoin pour continuer son voyage; de manière, cependant, que le nombre des sujets d'une puissance en guerre qui se trouveront à bord
du navire n'excède en aucun cas le tiers du nombre entier de
[524] l'équipage. Chaque changement *qui y aura lieu, le capitaine
sera obligé de le faire insérer, avec explication des causes qui l'ont rendu nécessaire, dans le rôle d'équipage appartenant au navire, lequel rôle sera dûment attesté par le consul ou commissaire de commerce, ou son délégué, dans le premier port où le navire entrera, pour que cette attestation puisse servir de légitimation au capitaine partout où besoin sera.

ART. 9. Les actes et documents ci-après spécifiés devront toujours être à bord des navires pourvus de notre passeport royal, savoir:

Le certificat ordonné par l'article 2;

La lettre de construction, &, si le navire n'a pas été construit pour compte du propriétaire actuel, il y sera joint le contrat de vente ou lettre d'achat. Le premier de ces deux actes et le second, s'il a eu lieu, accompagneront la requête de l'armateur pour obtenir le passeport;

Le passeport royal en latin, avec les traductions y appartenantes;

La lettre de jaugeage;

Le rôle d'équipage, dûment vérifié par les officiers à ce compétents;

Les charteparties & les connaissemens concernant la cargaison; & enfin l'attestation du bureau de douane établi sur les lieux où elle a été prise.

[525] Art. 10. La lettre de jaugeage sera expédiée par des *officiers à ce constitués dans les places maritimes de nos royaumes et pays. En cas qu'un de nos sujets ait acheté un navire en quelque port étranger, notre consul ou commissaire de commerce sur le lieu sera autorisé à pourvoir au jaugeage & à expédier au capitaine une lettre de jaugeage provisoire, laquelle sera réputée valable jusqu'à ce que le navire arrive à quelque port de nos états, où il sera jaugé et marqué en due forme, après quoi il sera expédié, dans la forme ordinaire, une lettre de jaugeage, qui par la suite fera partie des papiers de mer appartenant au navire.

Art. 11. Il est défendu à tout armateur d'acquérir, et à tout capitaine d'avoir à son bord, des papiers de mer doubles; il n'y sera point arboré de pavillon étranger pendant que le navire poursuivra son voyage avec les papiers & actes par nous accordés à cet effet.

Art. 12. Notre passeport royal n'est valable que pour un seul voyage—c'est-à-dire, depuis le temps que le navire, après en avoir été pourvu, aura quitté le port d'où il est expédié, jusqu'à son retour au même port; bien entendu que dans l'intervalle il n'aura pas changé de propriétaire; auquel cas l'acquéreur sera tenu de se procurer sous son nom les papiers et documents nécessaires.

[526] *Art. 13. Comme d'après les principes généralement établis, il ne saurait être permis aux sujets d'une puissance neutre de transporter, par le moyen de leurs navires, des marchandises qui seraient réputés contrebande de guerre, si elles étaient destinées pour les ports d'une puissance belligérante ou qu'elles appartinssent à ses sujets, nous avons jugé convenable de fixer expressément ce qui devra être compris sous la dénomination de contrebande de guerre, afin de prévenir qu'il ne soit abusé de notre pavillon pour couvrir le transport des articles défendus, & pour que personne ne puisse alléguer cause d'ignorance à ce sujet. Nous déclarons, en conséquence, que les articles & marchandises ci-après énoncés seront réputés être contrebande de guerre, vis: canons, mortiers, armes de toute espèce, pistolets, bombes, grenades, boulets, balles, fusils, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, gibernes, selles et brides, en exceptant toutefois la quantité qui peut être nécessaire pour la défense du vaisseau et de ceux qui en composent l'équipage.

En outre, resteront en pleine vigueur les engagements positifs contractés avec les puissances étrangères, relativement aux marchandises & propriétés dont ces engagements prohibent le transport en temps de guerre; & sera pour cet effet dressé un règlement particular, pour être délivré à chaque armateur quand il recevra notre passeport royal.

[527] *Art. 14. En cas qu'un vaisseau destiné pour quelque port neutre prenne sa cargaison des marchandises qui seraient contrebande de guerre si elles étaient destinées pour un port appartenant à quelque puissance belligérante, il ne suffira pas que le propriétaire et le capitaine ayant prêté le serment ordonné ci-dessus, mais l'affréteur & le capitaine seront de plus obligés de donner conjointement une déclaration différente de la déclaration générale de douane, dans laquelle seront spécifiés le genre, la quantité et le prix de ces marchandises. Cette déclaration sera véri-

fiée par les officiers de douane à l'endroit d'où le navire est expédié, après quoi l'officier de douane à ce compétent la fera incessamment parvenir à notre chambre générale des douanes, pour servir à contrôler & à constater l'arrivée des marchandises y spécifiées, au lieu de leur destination y énoncé, à moins que l'arrivée n'en ait été empêchée par capture ou détention violente, ou par quelque autre accident, de quoi il sera fourni preuve suffisante. Le contrôle s'effectuera de la manière qui suit: Le fréteur de ces marchandises devra fournir une attestation par écrit de notre consul ou commissaire de commerce, ou de leur fonder des pouvoirs au lieu pour lequel le navire est destiné, ou, à leur défaut, du magistrat compétent ou de quelque autre personne publiquement autorisée et qualifiée pour cet acte; laquelle attestation certifiera l'arrivée du vaisseau et le déchargement des
[528] marchandises conformément à la déclaration sus-mentionée & *en
sera la preuve légale. Cette attestation sera envoyée à notre collége général d'économie de commerce aussitôt que le vaisseau sera arrivé au port pour lequel il est destiné, ou bien après son retour dans un des ports de nos royaumes. En cas que cette attestation ne soit pas remise dans un délai proportionné à la longueur du voyage, notre collége général d'économie et de commerce exigera du fréteur du navire une déclaration, telle qu'il consentirait à l'affirmer par serment, portant qu'il n'a reçu aucune nouvelle, ni du navire ni de ces marchandises. Si l'arrivée du navire et le déchargement des marchandises ci-dessus spécifiées dans un port neutre ne peuvent être prouvés, et qu'une prise en mer ou quelqu'autre événement malheureux n'en soit pas la cause, le fréteur payera à la caisse de notre collége général d'économie et de commerce une amende de vingt rixdales pour chaque last de commerce que porte le navire; et seront en outre autant l'armateur que le capitaine soumis à l'action fiscale conformément aux lois.

ART. 15. Il est défendu à tous capitaines de navires de faire voile pour un port bloqué du côté de la mer par une des puissances en guerre; au contraire, ils devront se conformer strictement aux renseignements qui leur auront été donnés par les magistrats compétents relative-
[529] ment au blocus de ce port. En cas qu'un capitaine, *voulant
entrer dans un port dont le blocus ne lui aurait point été connu, rencontre quelque vaisseau de haut bord, portant pavillon de quelque puissance en guerre, dont le commandant l'avertisse que ce port est réellement bloqué, il sera obligé de se retirer incessament, et ne tentera en aucune manière d'y entrer, tant que le blocus n'en sera pas levé.

ART. 16. Il ne sera permis à aucun de nos sujets de s'engager au service de quelque corsaire ou armateur en course d'un pays en guerre, ni d'armer lui-même des bâtiments pour pareille entreprise, ni d'avoir part ou intérêt dans ce genre d'équipement. Aucun armateur, aucun capitaine, ne doit permettre qu'il soit fait usage de son navire pour transporter des troupes ou munitions de guerre, de quelle espèce que ce puisse être. Au cas qu'un capitaine ne puisse empêcher que, pour pareil service, il soit abusé de son navire par une force irrésistible il sera tenu de protester, d'une manière solennelle et par acte authentique, contre la violence qu'il n'a pas été en son pouvoir d'éviter.

ART. 17. Lorsqu'un vaisseau, non convoyé par une protection militaire, sera hélé en mer par quelque bâtiment armé appartenant
[530] à une des puissances belligérantes, *et qui serait autorisé à de-
mander l'inspection des papiers de mer à bord des vaisseaux marchands, le capitaine n'opposera aucune résistance à cet examen, si le commandant du bâtiment armé annonce l'intention de le faire; mais il sera, au contraire, obligé d'exhiber fidèlement, et sans dissimulation

quelconque, tous les papiers et actes appartenants tant au navire qu'à sa cargaison.

Il est pareillement défendu, sous des peines sévères, tant au capitaine du navire qu'à ses officiers et équipage, de jeter à la mer, déchirer ou retenir aucun des documents faisant partie des papiers relatifs au navire et à la cargaison, soit avant la visite, soit pendant qu'elle se fera. Dans le cas que nous aurions accordé au commerce une protection armée sous notre pavillon, alors les capitaines marchands qui désireront d'être reçus sous convoi seront tenus préalablement d'exhiber leurs papiers de mer au chef du convoi, et de se régler en tout d'après ses ordres.

ART. 18. Tout armateur ou capitaine qui contreviendra, en tout ou en partie, aux articles et règles de cette ordonnance, sera déchu de son droit de bourgeoisie et de commerce maritime, et en outre soumis à l'action fiscale conformément aux lois, et puni d'après la qualité du délit, soit [531] comme parjure, *soit comme infracteur des ordonnances royales.

Notre intention royale, au contraire, est de protéger et maintenir les droits de tous nos chers et fidèles sujets qui se conformeront strictement aux règles ci-dessus dans leur commerce et navigation légitime. En conséquence, nous avons ordonné à tous nos ministres, consuls et autres agents en pays étrangers d'employer leurs soins les plus actifs à ce qu'ils ne soient ni vexés ni molestés, et, s'ils le sont, de leur aider à obtenir justice et le redressement de leurs griefs. Promettons en outre d'appuyer toute réclamation fondée qu'ils se trouveront dans le cas de nous faire humblement exposer.

Donnée à Copenhague, le 4 mai 1803, sous notre main et sceau.

CHRÉTIEN, R. [L. S.]

SCHIMMETMANN-SCHESTEDT.

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[532] *NO. 2.—CHANCERY-CIRCULAR, BY WHICH PRIVATEERS ARE FORBIDDEN TO STAY IN DANISH HARBORS AND WATERS OR SELL THEIR PRIZES IN DENMARK.

The royal department for foreign affairs has informed the chancery that it has pleased His Majesty, on the 13th of last month, to resolve as follows:

Privateers of whatsoever nation are forbidden to stay in the Danish harbors and waters; in case only when such privateers are forced by evident danger, occasioned either by storms or a pursuing enemy, to seek their only refuge in these harbors, are they allowed to be received there and obtain the assistance which humanity requires; but they are enjoined, as soon as the danger is past, to go to sea again. No privateer is allowed to send her prizes to Denmark or to sell them there; nay, even in the above-mentioned case, when privateers in a state of distress enter into Danish harbors, are they forbidden to discharge or reload the prizes they may have brought, or sell them or their cargoes, either in retail or wholesale. For this reason His Majesty's subjects are strictly forbidden to purchase the prizes of foreign privateers.

When foreign ships of war enter into Danish harbors, they are [533] allowed to take with them into *the ports the prizes they may have taken, but they are obliged to take them out with them again; and they are forbidden at the same time to discharge or reload them, or sell them or their cargoes, either in retail or wholesale.

COPENHAGEN, *May* 20, 1823.

No. 3.—LETTRE PATENTE CONCERNANT LA RENTRÉE EN VIGUEUR DE L'ORDONNANCE ROYALE DU 4 MAI 1803, POUR RÉGLER LA CONDUITE DES COMMERÇANTS ET GENS DE MER EN TEMPS DE GUERRE ENTRE D'AUTRES PUISSANCES MARITIMES, ETC.

[Avec une annexe.]

Sa Majesté le Roi a, e. d. du 11 d. c., autorisé le ministère soussigné à rappeler à la mémoire de ses sujets les dispositions de l'ordonnance du 4 mai 1803, ayant pour objet de régler la conduite des commerçants et gens de mer en temps de guerre entre d'autres puissances maritimes, et à leur faire savoir également que, vu la guerre qui va probablement éclater, la dite ordonnance rentrera en vigueur sur chaque point des états de sa Majesté à partir du jour où la présente lettre patente y aura été publiée.

[534] Or, le Roi ayant reconnu nécessaire de sup*pléer à quelques-unes des dispositions de cette ordonnance, qui n'ont qu'un caractère général, sa Majesté a aussi voulu dès à présent faire donner préalablement à ses sujets quelques indications qui les mettent à même de juger quelle est la conduite qu'ils auront à tenir pour se conformer consciencieusement, comme ils le doivent, dans le même esprit et exactement de la même manière que le Roi et son gouvernement le feront, tant en général aux stipulations des traités applicables au cas de guerre dont il s'agit qu'à la déclaration de neutralité communiquée par ordre du Roi à plusieurs puissances étrangères, et nommément aux puissances éventuellement belligérantes, par la note circulaire dont un extrait se trouve ci-joint en traduction.

Par conséquent, le ministère soussigné a également été chargé de faire savoir à tous, et de recommander à leur attention la plus particulière, ce qui suit:

§ 1. En ce qui concerne l'article 1 de l'ordonnance du 4 mai 1803, l'on est averti par la présente que les passeports royaux en latin y mentionnés sont requis pour tous les voyages, à l'exception toutefois de ceux qui, ayant pour point de départ un port de l'intérieur et pour destination un autre port de la monarchie danoise, sont entrepris dans [535] la Balti*que, le Kattegat et la Mer du Nord, ou bien qui ont lieu dans la Baltique et le Kattegat entre des ports danois et des ports neutres.

Quoique le passeport royal en latin ne soit valable que pour un seul voyage—c.-à-d., depuis le temps où le navire, après en avoir été pourvu, aura quitté le port d'où il est expédié, jusqu'à son retour, (ordonn. du 4 mai 1803, art. 12)—il pourra cependant, selon les circonstances, être renouvelé moyennant une simple attestation.

Par les colléges mentionnés à l'article 9 de l'ordonnance du 4 mai 1803, on devra comprendre les ministères respectifs, et quand l'article 14 de l'ordonnance fait mention du collége général d'économie et de commerce, on entendra par là le ministère des affaires étrangères; également le ministère des finances est à substituer à la chambre générale des douanes, nommée dans le même article.

Le passeport royal en latin s'expédie au ministère des affaires étrangères, et jusqu'à ce qu'il en soit autrement ordonné, gratuitement.

§ 2. Outre les objets énumérés à l'article 13 de l'ordonnance du 4 mai 1803, il faut encore entendre par contrebande de guerre toutes fabrications pouvant servir directement à l'usage de la guerre. Pour [536] *le cas que des changements ou additions devraient être introduits à l'égard de la définition des objets de contrebande de guerre par suite de stipulations spéciales entre le Roi et d'autres puissances, le ministère se réserve de faire connaître les décisions éventuelles de sa Majesté.

§ 3. En conséquence des dispositions des traités en rigueur, (traité avec la Grande-Bretagne du 11 juillet 1670, art. 3, et article explicatoire, du $\frac{21}{4}$ juillet 1780,) ainsi qu'en conformité de la déclaration de neutralité du Roi, (voir l'annexe, 1°,) il n'est pas permis aux sujets de sa Majesté d'entrer au service des puissances belligérantes, en quelque qualité que ce soit, ni dans leurs armées, ni dans leurs marines, ni plus spécialement d'entreprendre le pilotage des navires de guerre ou de transport de ces puissances en dehors des parages dans lesquels le pilotage se fait par des pilotes autorisés par le gouvernement.

Les dispositions qui précèdent sont portées par la présente à la connaissance de tous ceux que cela regarde, pour leur information et pour leur servir de gouverne.

Copenhague, au ministère des affaires étrangères, ce 20 avril 1854.

BLUHME.

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[537] *ANNEXE.

Extrait de la note circulaire contenant la déclaration de neutralité du roi.

Le système que sa Majesté le Roi de Danemarck entend suivre et appliquer invariablement est celui d'une stricte neutralité, fondée sur la loyauté, l'impartialité et un égal respect pour les droits de toutes les puissances. Cette neutralité (selon les vues uniformes des deux cours[1]) imposerait au gouvernement de sa Majesté le Roi de Danemarck des obligations et lui assurerait les avantages suivants:

1°. De s'abstenir, pendant la lutte qui pourrait s'engager, de toute participation, directe ou indirecte, en faveur d'une des parties contendantes au détriment de l'autre;

2°. D'admettre dans les ports de la monarchie les bâtiments de guerre et de commerce des parties belligérantes, le gouvernement se réservant toutefois la faculté d'interdire aux premiers, ainsi qu'aux navires de transport appartenant aux flottes respectives des puissances belligérantes, l'entrée du port de Christiansö;

Les règlements sanitaires et de police que les circonstances auraient rendu ou pourraient rendre nécessaires devront naturellement être observés et respectés. Les corsaires ne seront pas admis dans les [538] ports ni *tolérés sur les rades des états de sa Majesté danoise;

3°. D'accorder aux bâtiments des puissances belligérantes la faculté de se pourvoir, dans les ports de la monarchie, de toutes les denrées et marchandises dont ils pourraient avoir besoin, à l'exception des articles réputés contrebande de guerre;

4°. D'exclure des ports de la monarchie l'entrée—les cas de détresse constatée exceptés—la condamnation et la vente de toute prise; et enfin,

5°. De jouir, dans les relations commerciales des états de sa Majesté danoise avec les pays en guerre, de toute sûreté et de toutes facilités pour les navires danois, ainsi que pour leurs cargaisons, avec obligation toutefois pour ces navires de se conformer aux règles généralement établies et reconnues pour les cas spéciaux de blocus déclarés et effectifs.

Tels sont les principes généraux de la neutralité adoptée par sa Majesté le Roi de Danemarck, pour le cas qu'une guerre en Europe viendrait à éclater. Le Roi se flatte qu'ils seront reconnus conformes au droit des gens et que leur loyale et fidèle observation mettra sa Majesté en état de cultiver avec les puissances amies et alliées ces relations que, pour le bien de ses peuples, il lui tient tant à cœur de préserver de toute interruption.

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[1] De Copenhague et de Stockholm.

[539] *No. 4.—TRANSLATION.—NOTICE OF THE GENERAL APPLICATION OF THE DECREE OF THE 4TH OF MAY, 1803, RELATING TO THE CONDUCT OF MERCHANTS AND NAVIGATORS IN CASE OF WAR BETWEEN MARITIME POWERS.

COPENHAGEN, *the 25th of July*, 1870.

In accordance with the command of His Majesty the King, the ministry of foreign affairs gives hereby public notice that on account of the war, now broken out between France and Prussia, the decree of the 4th of May, 1803, is to go into effect with the following modifications:

§ 1. The royal Latin ship's pass, prescribed by the decree of the 4th of May, 1803, is, according to the law of the 13th of March, 1867, abrogated for ships which are provided with certificates of nationality and registrar and for ships that are still sailing with papers formerly prescribed; the bill of tonnage, together with other documents of legitimation, is to be considered as a sufficient proof of the nationality of the ship.

[540] * § 2. The rule concerning the nationality of the crew prescribed in the decree of the 4th of May, 1803, § 8, is abrogated by the law of 23d January, 1862, concerning the hiring of foreign sailors.

§ 3. By the declaration signed in Paris the 16th of April, 1856, by the two belligerent powers, and acceded to by His Majesty on the 25th of July of the same year, concerning the rights of neutral powers during a war between maritime powers, the following rules are accepted:

1. Privateering is, and continues to be, abolished;
2. The neutral flag covers the hostile cargo with the exception of contraband of war;
3. Neutral cargo, with the exception of contraband of war, is not liable to seizure on board of hostile ships; and
4. Blockade in order to be binding must be effective, and must be maintained by a force sufficiently strong to prevent access to the hostile coast.

§ 4. Besides the articles mentioned in paragraph XIII of the decree of the 4th of May, 1803, all such wrought articles which can immediately be applied to the uses of war are to be looked upon as contraband of war.

[541] *In case that changes and additional rules in relation to contraband of war should become necessary in consequence of particular agreements between His Majesty and foreign powers, the ministry for foreign affairs reserves to publish what may be thought necessary.

§ 5. In consequence of the neutrality which His Majesty has determined to maintain during the continuation of the war, the royal subjects are herewith forbidden to take service in whatsoever quality among either of the belligerent powers, whether it be on land or on board of their government ships, as well as more particularly to pilot the ships of war and transport-ships of these powers outside of the Danish pilot waters.

The ministry for foreign affairs, Copenhagen, the 25th of July, 1870.

O. D. ROSENÖRN LEHN:

No. 5.—GENERAL INSTRUCTION FOR COMMANDERS OF SHIPS IN DANISH WATERS DURING THE STATE OF NEUTRALITY OF DENMARK.

[542] *§ 1. The commander of a vessel of war, sailing in our own waters, has as far as possible to preserve order on coasts,

roads, or in harbors, and to see that commerce and navigation go on as usual, and without interruption or molestation by strangers.

§ 2. All possible kindness and politeness must be shown to all foreign vessels of war of whatsoever nation, but no active assistance must in any way be rendered them, except such as is of a purely humane nature. It is especially forbidden to assist them in loading, furnishing pilots, or any other nautical help.

§ 3. In case foreign vessels of war have communication with the land, the maintenance of order is enjoined upon the police of the place or port-captain, but assistance and advice are always to be yielded to such authorities whenever required. If conflicts may arise, either on account of misunderstanding (want of knowledge of language) on the one or the other side, or on account of excessive exactions on the part of the foreign vessels of war, the commander of the Danish [543] vessel of *war has to intervene in a mediatory, explanatory, and conciliatory manner, but at the same time firmly and seriously, whenever the rights of the King's subjects and the neutrality of the Danish territory are concerned.

§ 4. The Danish territory extends one Danish mile from the fixed coast of the King's lands, (see the circular of chancery, August 18, 1810,) except at such places where the distance between the Danish and foreign coasts is less than one mile, at which places Danish jurisdiction extends to the middle of the sea.

§ 5. It is His Majesty the King's will, that ships of all nations be under the protection of the King's sovereignty while they are within the limits of Danish territory, in consequence of which the Danish neutrality is to be maintained within the limits of the territory, so that capture and visitation of ships, be they belligerent, neutral, or Danish, cannot be allowed within the territory.

[544] *6. The introduction of prizes into Danish harbors is not allowed. When prizes are brought to anchor on an open road or coast within limits of Danish territory, it is supposed to take place on account of urgent circumstances; but then the commander of the Danish ship of war must inform the prize-master to withdraw the prize as soon as possible; and, besides, special care must be taken that nothing is sold or brought on shore from the prize while staying on Danish territory. Necessary information must, in respect to this, be given as soon as possible to the proper authorities on land.

§ 7. If a ship, be it a war or merchant vessel, in its flight from a hostile power, seek refuge in Danish territory, it is the duty of the commander of the port to take it under his protection. It is expected that warning be given to the pursuing ship of war, either by sending a boat with an officer or by firing a warning salute. This will be sufficient to prevent such a breach of neutrality; but if against all expectation [545] a conflict or seizure *should, nevertheless, take place, the Danish commander has to inform in a brief protest, written in a firm but polite tone, the commander of the foreign ship of war, that a breach of Danish neutrality and territory has been committed. The Danish commander then reports as soon as possible to the ministry what had taken place, and sends a copy of the protest, together with the name of the ship concerned and its commander, &c.

§ 8. If foreign ships of war are inclined to enter into Danish ports, where a Danish ship of war is stationed, the commander takes care that the ship conforms to the established regulations of the harbor, general as well as local, such as discharging of powder, extinguising of fire, &c.

§ 9. Outside of Danish territory the sea is to be considered as open water, in consequence of which a Danish commander is to look upon any enterprise undertaken by the ships of the belligerent powers as not concerning him.

If, however, foreign ships of war in open water, but within sight [546] of a Danish ship of war, *should attack Danish merchantmen, the commander ought to see that such ships be permited to continue their course as soon as possible; but he is only allowed in such cases to act mediatingly.

If the foreign visiting ship of war declare it as his duty to capture such a vessel on account of its being loaded with contraband of war for a port of the belligerent powers, the commander of the ship cannot make any opposition to such an act; he has only to report, as soon as possible, to the ministry what had taken place.

If a foreign ship of war, against all expectation, feel inclined to molest a Danish merchantman, by depriving it of its crew, goods, provisions, or by occupying the ship for its service as a transport of sick persons or seized goods, the Danish commander must declare that he is bound to protect the liberty and rights of his countrymen to navigate the sea unhindered, a right limited by nothing except by the inconveniences unavoidable to all seafaring nations on account of the actual state of war; and he must seriously and most urgently, in regard to Danish ships, caution against any action or transgressing of this limit.

[547] Unless such an admonition is not attended *to, a serious protest is lodged against the proceeding of the foreign ship of war in which the Danish commander, besides declaring the action to be unlawful and a breach of the neutrality of Denmark, for the consequences of which he renders the concerned commander responsible, must in every case reserve to the ship-owner or captain ample remuneration and compensation for the loss of goods and time thus sustained by him. Although it is the object of these instructions to give the commanders exact orders how to proceed in certain definite cases, the ministry has, at the same time, been willing to give them advice how to act in certain accidental and unforeseen cases, where it depends upon their good conduct and prudence combined with seriousness and determination. As a rule for such unforeseen cases, the commanders are enjoined to observe the strictest neutrality, abstaining from any sign of partiality either for the one or the other of the belligerent powers whatever, in words or actions, maintaining the neutrality of the Danish territory as well as good order, all in connection with those outward tokens of politeness and kindness which are in use on board of ships of war.

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[548] *No. 6.—TRADUCTION FRANÇAISE DE LA § 76 DU CODE PÉNAL, (DU 10 FÉVRIER, 1866.)

Celui qui, sans y être autorisé par le roi, entreprendrait de recruter des hommes pour servir dans une armée étrangère, est puni de travaux forcés jusqu'à six ans, si le royaume est engagé dans une guerre, et, si tel n'est pas le cas, d'une peine pouvant aller depuis deux mois de simple réclusion jusqu'ā deux ans de travaux forcés.

Le sujet qui, sans la permission du roi, s'engagerait en temps de guerre au service d'une puissance étrangère n'étant pas en guerre avec le Danemarck, est passible de prison, ou, suivant la nature du cas, des travaux forcés jusqu'à une année.

L'acte de recrutement est accompli depuis le moment où un individu est accepté pour le service étranger.

[549] *English translation of paragraph LXXVI of the Danish penal code of February 10, 1866.

Those who, without the authority of the King, attempt to recruit men for service in a foreign army, will be punished with forced labor for six years, if the kingdom is engaged in a war; and if such is not the case, with a penalty ranging from two months' solitary confinement to two years of forced labor.

The subject who, without the permission of the King, engages in times of war in the service of a foreign power not at war with Denmark, is liable to imprisonment, or, according to the nature of the case, to forced labor, for one year.

The act of recruiting is considered accomplished from the moment when an individual is accepted for the foreign service.

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[550] *No. 7.—LAW RELATING TO THE REGISTRATION OF DANISH SHIPS.

[Translation.]

We, Christian the Ninth, by the grace of God King of Denmark, the Vandals, and Goths, Duke of Slesvig-Holstein, Storman, Ditmarsh, Lauenborg, and Oldenborg, make known:

The rigsdag have passed and we have sanctioned the following law:

§ 1. To entitle a ship to carry the Danish flag its owner or owners must, either by right of birth have the right of Danish nationality, and must not, in this case, be domiciliated abroad, or, on the other hand, the owner or owners must have acquired the same right by having become a Danish citizen in virtue of a fixed domicile in Denmark. If the ship is owned by a share company the latter shall be subject to Danish law, and its board of directors have domicile in Denmark, and be composed of shareholders who fulfill the above-required conditions.

§ 2. A register shall be kept of all ships which are entitled to [551] carry the Danish flag and which *have been measured according to the law of measurement. After entry on the registry a document shall be delivered (certificate of registry and nationality) which, as long as it remains in force, shall in conjunction with the marks (§ 3) affixed to the ship serve for and be sufficient to identify it in all cases where the question of its nationality and identity may arise.

Besides the above-mentioned document, every registered ship shall, both in time of peace and war, be provided with a list of the crew, a customs clearance, besides the necessary papers relating to the cargo.

Ships of twenty tons burden and thereunder, engaged in the home coasting trade, are exempt from carrying the certificate of registry and nationality; they shall be entered on a separate register and only receive a certificate of measurement, the form of which shall be decided by the commissioners of customs. Such vessels, however, may on application be entered on the principal register and, upon conforming to the provisions of the present law, obtain a certificate of registry and nationality.

Danish trading-vessels shall hereafter only be entitled to carry the ordinary Danish trading-flag, as specified in the ordinance of the 11th July, 1748, § 4.

[552] *§ 3. All ships registered according to § 2 shall have the mark of nationality, "D. E.," (Dansk Eiendom, viz: Danish property,)

the tonnage and registered letters, permanently and legibly marked on the main-beam in the after-part of the main hatchway; or, if this cannot be effected, in another conspicuous and suitable spot. When these marks no longer exist, the ship cannot be recognized as a Danish registered vessel.

§ 4. The registration of ships shall be under the control and superintendence of the commissioners of customs, and shall be effected in specified registration districts, the extent of which the commissioners shall limit: in Copenhagen, by a special registrar, out of Copenhagen, by the local customs authorities, whose jurisdiction shall be fixed by the central commissioners, and at the Feroe Islands by the district sheriff.

The Copenhagen registrar shall keep a general register of all ships registered in the kingdom, and issue the certificates of registry and nationality required by § 2.

§ 5. The ships belonging to each district shall be entered on the district register in consecutive series and running numbers. [553] *Ship-owners may have their ships registered in whichever district they please; the ship shall then be considered as belonging to this district. The registers shall be kept in authorized books, which always shall remain by the respective offices.

§ 6. All registered ships in the kingdom shall be entered in the central register in consecutive order and with running letters.

The letters a ship thus obtains in the central or head register, and which are unchangeable as long as the registration remains valid, shall be the registration letters of the vessel, and shall be marked on it.

§ 7. The register books, the central as well as the district registers, shall contain the following particulars under separate headings, viz:

4. The ship's registration letters, name, port of registry, and place where built.

2. Description of ship, mode of construction with details, and its principal dimensions.

3. The ship's tonnage, with a statement of the method followed in calculating it.

4. The name of the registered owner or owners, their rank or profession, and title. When there are several registered owners, a state- [554] ment of their relative part shares in the ship shall *be given. If the ship belongs to a company, its name, place of business, and managing owner's name, shall be inscribed. The day and the year of the registration of each ship shall be inscribed in the register-book.

§ 8. When a registered ship is taken off or erased from the register-book, the reason for it must be entered in the same, together with date and place of issue of such vouchers as might prove that it had ceased to exist, has lost its right of nationality, or has been transferred to another registry-district. (§§ 16, 17, and 19.)

§ 9. The owner of every ship that is to be registered must personally, or through an authorized agent, give written notice thereof to the registrar of the district to which the vessel belongs; or, if at the time when the registration is to take place the said vessel is in another district, to the registrar of such district. This notification must be accompanied by the following proofs:

1. The builder's certificate, and, in as far as the ship is foreign-built, the bill of sale, or other document in proof of the transaction, [555] whereby it became Danish property, as well as a receipt *for the payment of the import-dues. These documents must be produced in the original and in copies, which latter will be retained in the archives of the register-office.

2. One of the ship's owners, or owner, shall make a written declaration upon honor, supported by the necessary proofs, to the effect that they, or he, are persons (as described by § 1) entitled to own a Danish ship. If the ship is owned by a share company, then one of its directors must give the like declaration and proofs that they have complied with the requirements of § 1. Those declarations shall further contain an assurance that the certificate of registry and nationality thus obtained shall not be misused to procure for any other ship, or the same ship in possession of foreigners, the privileges of Danish nationality. This declaration shall be signed by the party concerned, either in the presence of the registrar, or before a public notary.

Should doubts arise as to whether the party concerned is entitled to own a Danish ship, he must prove his title by an attestation from the authorities at his place of residence.

[556] In special cases, the board of customs may make exceptions with respect to proofs required, if *satisfactory explanations through other channels are given.

§ 10. When the local registrar has drawn up the necessary statement with respect to registration and measurement, he shall send it in (with vouchers) without delay to the central registrar in Copenhagen. The latter shall check the measurements and examine the accompanying vouchers in proof thereof, and he may, if considered necessary, cause the ship to be wholly or partially remeasured and fresh documents and proofs to be procured. In virtue of the proofs thus collected the ship shall be entered in the central register-book.

§ 11. When the registration is effected, the registrar-general shall issue a certificate of registry and nationality, which shall include the certificate of measurement and other details required by § 7.

The certificate shall be made out in accordance with the subjoined formulary. It shall (together with the documentary proofs sent in) be sent, without delay, to the local registrar, who thereupon shall make the necessary entry in the local register-book, § 5.) After having caused the mark of nationality, "D. E.," the tonnage and registry letters to be marked on the vessel, and the stamp having duly been paid, [557] *he shall deliver the certificate to the owner. Before the ship clears, the registrar shall make an indorsement on the certificate of the master's name and competency to command a vessel.

If, at the time of registration, the ship is not in the district where she is wished to be registered, the registrar, who has delivered up the certificate, shall transmit to the registrar of the district where she belongs the documents and information required by § 9, to enable the latter to enter her on the register-book of his district.

With respect to the Feroe Islands, the county or district sheriff shall issue a provisional certificate of nationality in the form to be hereafter specified by the authorities, and which shall be valid until such time as the Copenhagan registrar-general issues a permanent document.

§ 12. The certificate shall always remain with the ship, and be produced at the custom-house, as well as wherever required by the Danish civil, military, or consular authorities. Every change or indorsement of the certificate by others than the registrars or consuls is prohibited, and may expose the holder to punishment; in some cases (according to circumstances) as for forgery.

§ 13. A ship, built or purchased abroad for Danish account, cannot be registered until she arrives in a Danish registry district. [558] *Danish consuls, however, upon receiving the documentary proofs required by § 9, (1 and 2,) may issue provisional certificates of nationality, which shall remain in force until the final registration of the ship is effected.

Such provisional certificates of nationality shall contain the following particulars:

1. Name and description of the ship.
2. Time and place of purchase, together with name of the Danish owner or owners, according to the bill of sale or other title-deed.
3. Captain's name.
4. The most accurate information as to her tonnage, build, and description, which can be obtained.
5. Duration of the certificate's validity.

A duplicate of such provisional certificate shall, immediately after the issue, be sent through the proper government department to the registrar-general in Copenhagen.

Such provisional certificate of nationality shall, however, only be valid until the arrival of the ship at a Danish port, when it shall be delivered up to the registrar, and, provided no special permission has been granted to the contrary by the commissioners of customs, shall in no case remain in force longer than two years from the date of its issue. The master of a Danish registered ship which is rebuilt abroad may require the nearest consular office to give him authority to retain his certificate of registry until he shall arrive at a Danish port, where his ship can undergo examination as to whether the alteration made in her shall render the issue of a new certificate necessary. Such [559] authorization, however, *cannot, without special permission granted by the commissioners of customs, remain in force longer than two years from its date of issue.

§ 14. Every registered ship shall carry her own name and port of registry marked in light-colored, legible letters on a dark ground (or *vice versa*) on a conspicuous part of her stern. Concealing or obliterating those names shall only be permitted in time of war to escape capture by the enemy.

No ship shall be designated by any other than its registered name. A registered ship's name can only be altered through change of ownership, and then only with the consent of the commissioners of custom, in which case a new certificate shall be made out, but in the registration letters shall remain unchanged.

§ 15. On application to the commissioners of customs a new certificate of registry, exactly corresponding with the former, may be given, in which case the old one must be returned.

In the event of a certificate of registry having been lost, a fresh [560] one can be obtained, likewise on *application to the customs authorities.

In all cases where a new certificate is given without remeasurement at the same time having taken place, the applicant is only required to pay the stamp duty.

If the loss of the certificate takes place abroad the nearest consular officer may give a provisional certificate, (§ 15,) accompanied with special remarks explanatory of its issue. In this case the applicant shall make a declaration, enumerating the particulars of the loss.

§ 16. If a registered ship is lost, broken up, or otherwise destroyed, the owner shall immediately give written notice thereof to the registrar of the port of registry of such ship and deliver up to him the certificate of registry in order to have it canceled; or, when lost, explain why it cannot be returned.

If the ship is lost abroad the above notice shall be given to a Danish consul and the certificate delivered to him.

The consul shall then transmit these documents with the particulars of the loss to the proper government department.

§ 17. Whenever any registered ship or share in a ship becomes [561] vested in a person not qualified to be owner, (§ 1,) *and she in this manner loses her right to be considered as Danish property and carry the Danish flag, the registered owner shall immediately give written notice of the transfer to registrar of the port where the ship is lying, in order that the mark "D. E." may be obliterated. He (the registered owner) shall likewise, within four weeks from the receipt of notification of the transfer, give written notice of the transaction and deliver up the certificate of registry to the registrar of the ship's port of registry.

If the transfer has taken place abroad, the notification, with the certificate and other ship's documents, shall immediately be sent to the Danish consul, who shall cause the mark "D. E." to be erased, and send the documents in question to his government. At places where there is no Danish consul, the owner or master shall obtain a notarial certificate to the effect that the mark "D. E." has been obliterated, and transmit the documents and certificate as above mentioned to the registrar-general in Copenhagen.

If a registered ship, or a share thereof, either by public sale or by inheritance, becomes the property of another, the authorities who have effected the sale, or administered the estate, or, if abroad, the consul, shall comply with the provisions of the law in these respects.

[562] *The above provisions likewise apply to the case of a Danish ship being condemned abroad as unseaworthy.

§ 18. Change of ownership, *not* touching on the ship's right of carrying the Danish flag, together with other alterations regarding the particulars registered in pursuance of § 7, shall, within four weeks after the change or alteration has taken place, be notified to the registrar concerned by the owner, or, in case of change of ownership, by the new owner; and, as far as any proofs in this respect are required, pursuant to § 9, the above transactions must be substantiated before the registrar aforesaid, in order that any necessary rectification may be made in the register-book.

Change of owner or master does not necessitate the issue of a new certificate of nationality, unless this might be requested; an indorsement of the circumstance on the original will only be required.

When such changes take place abroad, the nearest consular office shall make these indorsements, and, in case of change of ownership, report the circumstance.

[563] *When, on the other hand, a registered ship is so altered with respect to kind, burden, or otherwise, that she no longer answers to the description embodied in the certificate of registry, the registrar of the district she belongs to shall either indorse on the certificate the nature of the alteration that has taken place, or, according to circumstances, cause a new registration to be made, and issue a fresh certificate. If the alteration takes place abroad, the nearest consular officer shall make the indorsement and report the case, (§ 13.)

Every registrar in the kingdom shall, without delay, report to the registrar-general in Copenhagen all such changes that may have taken place in the ships of his district.

§ 19. When it is wished to transfer a registered ship from one district to another, a written demand to this effect must be addressed by the owner or owners to the actual registrar.

The original certificate shall, in this case, be sent in as soon as possible either to the registrar of the district where the ship hitherto has belonged to, or of that to which she is going to be transferred, in order that a fresh one may be issued.

[564] *§ 20. Copies of entries on the registers may be obtained on application, for the charge of one rixdollar for each ship inquired about. On the same condition legally certified copies of older, or canceled certificates, may likewise be obtained from the registrar-general in Copenhagen, as well as a statement of the reasons for giving the copy.

§ 21. In case an owner, on account of special circumstances, desires permission for an unregistered Danish ship to sail from one home-port to another, the commissioners of customs may, on application, give a pass or permit, which shall have the validity of a certificate of registry within the above-mentioned limits.

§ 22. Every act tending to procure the registration of a ship without complying with the provisions of the present law shall, provided the nature of the act does not entail heavier punishment, be liable to a fine of not exceeding 2 rixdollars for every ton of the ship's burden.

[565] *§ 23. If, after the drawing up and delivery of a certificate of registry, it is proved that such document has been fraudulently obtained for an authorized ship, a fine of not exceeding 5 rixdollars for each ton of the ship's burden shall be inflicted, and the offender shall still be liable to such further punishment as the nature of the offense might entail at ordinary criminal law.

Such certificate shall, by public notice, be called in and canceled as soon as possible.

§ 24. A penalty of not exceeding 50 rixdollars shall be paid for the neglect to notify alterations which have deprived a ship of her right to carry the Danish colors.

If such neglect is intentional, with a view to use the certificate for lucrative purposes, as a proof of nationality for an unauthorized ship, a fine of not exceeding 5 rixdollars per ton of the ship's burden shall be paid.

§ 25. Neglect to return certificate of registry as prescribed by §§ 16 and 17, and to cause the erasure there enjoined of the letters [566] "D. E." to be effected, *shall be punishable by a fine of not exceeding 2 rixdollars for each ton of the ship's burden, unless sufficient reason for the neglect may be given. Such certificate, if the ship still exists, shall be declared canceled by public advertisement.

§ 26. The commissioners of customs shall fix the amount of fines inflicted according to §§ 22–25, and have also power to inflict penalties not exceeding 20 rixdollars for breaches of the present law not otherwise punishable, as well as for infractions of any later supplementary enactments.

§ 27. The registered owner, or, in case of joint property, the owners, all and each of them, are liable for the payment of the above fines.

With respect to share companies, the members of the board of directors, one and all, shall be liable for the said fines.

§ 28. Persons not customs officials or in the service of customs, called upon to pay fines pursuant to this law, may appeal to the ordinary courts, in which case the commissioners of customs shall cause [567] *the matter to be tried as an ordinary police case, and the court is then to decide whether the party concerned is guilty, and in this case what penalty he shall be liable to.

Appeal on behalf of the Crown shall, moreover, be decided on by the said commissioners. The fines fall to the treasury.

§ 29. The commissioners of customs shall draw up the necessary instructions for the proper carrying out of this law.

§ 30. This law, a copy of which shall accompany the delivery of every certificate, comes into force on the 1st of October, 1867, after which date all previous enactments in contradiction to its provisions shall be annulled.

The provisions of the present law may, with such modifications as local circumstances may render necessary, and after the necessary negotiations with their legislatures, be made applicable to Iceland and the Danish West Indian possessions.

PROVISIONAL REGULATION.

[568] § 31. Vessels which, at the date of this law coming *into force, already are Danish property, and as such provided with the hitherto-used mark of nationality and entered in the hitherto-used shipping-register, but whose certificate of measurement is out of date, shall be registered according to, and comply with the provisions of, the present law.

Vessels whose certificate of measurement has not yet run out may, on application to the registrar, be remeasured and registered according to the regulations of the present law, in which case the old certificate must be delivered up.

All parties concerned shall comply with the preceding enactment.

Given at the palace of Amalienborg the 13th day of March, 1867, under our royal hand and seal.

CHRISTIAN R. [L. S.]

C. A. FONNESBECH.

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[569] *No. VIII.—PRUSSIA.

MEMORANDUM.

In the year 1855 several attempts were made, especially in the Prussian Rhine province, to enlist Prussian subjects into service in the British foreign legion.

The inquiries instituted produced the suspicion that the English consul at Cologne, Curtis, was concerned in these enlistments. He was therefore subjected to a judicial investigation in accordance with ¶ III of the Prussian penal code of April 14, 1851, which is as follows:

> Whoever enlists a Prussian into the military service of foreign powers, or brings him to the persons enlisting for the same; likewise whoever seduces a Prussian soldier to desert, or designedly assists his desertion, is punishable with imprisonment of from three months to three years. The attempt to commit these acts is subject to the same punishment.

The said Curtis, who had become by naturalization a Prussian, was condemned at the first trial to three—upon appeal to six—months' imprisonment.

At the desire of the British government this punishment was, by means of royal pardon, remitted, and he was recalled from his post at Cologne.

BERLIN, *March* 14, 1872.

[570] *No. IX.—RUSSIA.

Code of laws of the Russian Empire, edition of 1857.

Vol. 15, the Penal Code, book third of crimes against the state.

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ART. 293. If any Russian subject in time of peace attacks with open force the inhabitants of neighboring or other states, and through that exposes his country to danger of rupture with a friendly power, or, at least, to a similar attack on the part of subjects of that power on Russian territories, for this crime against national law, (the law of nations,) he himself and all participating in it of their own will with knowledge of the crime and of the unlawfulness of his undertaking are condemned:

To deprivation of all civil rights and to exile with hard labor in a fortress for a period of from 8 to 10 years; and if they are not exempt by law from corporal punishment, to punishment by whipping by the executioner in the measure fixed in Art. 21 of this code for the fifth degree of punishment of this kind with branding.

Complete collection of laws, (*vol. xxxiii, p.* 757, 1858, *June* 16, 33302,) *of the measure of punishment for crimes against the security of powers friendly to Russia.*

[571] If one of the crimes mentioned in Articles 275, 276, *277, 283, 248 and 287, of the penal code, shall be committed against a foreign state, with which, on the basis of treaties or published laws or decrees, there is established a reciprocity in this respect, or against the supreme power of that state, those guilty, provided there is added to this no crime meriting a greater punishment, are condemned:

To loss of all civil rights and privileges and of all personal and class distinctions, and to exile in the government of Tomsk or Tobolsk; or if they are not exempt from corporal punishment, to delivery over to the companies of disciplinary arrest of the civil authorities for a period of from one and one-half to two and one-half years, or of from one to one and one-half years.

When the crime has been committed with aggravating circumstances, then to loss of all rights and to exile as a colonist in Siberia, in the not most distant places.

Code of laws, &c., vol. xv, book iv, chap. vii.

ART. 367. Any one who, leaving his country, enters into the service of a foreign power, without the permission of the government, or becomes a subject of a foreign power, is liable for this breach of his duty of subjection and his oath of allegiance:

[572] *To loss of all civil rights and eternal exile from the limits of the empire; or, in case of his voluntary return to Russia, to exile in Siberia.

No. X.—THE NETHERLANDS.

No. 1. Extract from the penal code of the Netherlands.
No. 2. Circulars with reference to neutrality.

No. 1.—EXTRACT FROM THE PENAL CODE.

[Translation.]

De grondwet voor pet Koningcijk der Nederlanden, de Nederlandsche Wetbocken. (*Schiedam*, 1865,) *Wetbock van Straftegt. Lib. iii, cpt. i, sec. i, pp.* 676, 677.

ART. 84. Whosover shall, by hostile acts not approved by the government, expose the state to a declaration of war, shall be punished with banishment, and if war be actually carried out, he shall be punished with transportation.

ART. 85. Whosoever shall, by acts not approved by the government, expose Frenchmen* to reprisals, shall be punished with banishment.

*NOTE.—It will be observed that the above articles, translated from the existing code of the Netherlands, are an exact transcript from the code penal of France, [573] which was introduced into the Netherlands at the time of the annexion *of the Netherlands to France, and, of course, all the commentaries on the subject of the French code, and of the other continental codes, are applicable to that of the Netherlands.

Translation of circular of April 14, 1854.

[Nederlandsche Staats-Courant, Saturday, April 15, 1854.]

It having come to the knowledge of the minister of foreign affairs that plans exist to export ammunition of war, contrary to the duties imposed by the laws of peoples, to neutrals, he thinks it his duty to call the attention of ship-owners and ship-chandlers to the danger to which they would expose themselves by such expeditions, but also to the fatal consequences and trouble which Dutch vessels would have to suffer, if with the belligerent powers the confidence could not exist that said flag will not be used in any case for any unlawful transport of contraband of war.

By the assurance, received by the King's government, that the rule (free ship, free goods) will be respected by all the belligerent powers, that for contraband of war and for dispatches for one of the belligerent powers alone an exception will be made, and that the search, whether vessels carrying the Dutch flag contain such contraband, will be [574] made in the easiest manner possible, it is for *the honest trader and ship-owner of the greatest import, that everywhere the conviction exists, that no abuses will take place under protection of the Dutch flag, and that, as such, no cause be given to raise unfavorable opinions about those having the privilege to use this flag.

His Majesty's government would be unable to protect vessels which, contrary to the duty of neutral states, contained contraband of war, or were charged with forbidden dispatches.

VAN HALL.

THE HAGUE, *April* 14, 1854.

Translation of circular of April 15, 1854.

[Nederlandche Staats-Courant, Sunday 16 and Monday April 17, 1854.]

According to decrees of the King, the ministers of foreign affairs, of justice, and of the navy announce, to all those whom it may concern,

that in order to maintain a complete neutrality in the present war, no cruisers, under any flags, commissions, or lettres de marque whatever, will be admitted within our sea-ports, with or without prizes, except in cases of sea-danger, and that, in any case whatever, such cruisers
[575] and their prizes will be watched and be ordered to sea as soon *as possible.

The ministers above named,

VAN HALL.
DONBER CURTIUS.
J. ENSLIE.

THE HAGUE, *April* 15, 1854.

No. 2.—CIRCULAR WITH REFERENCE TO NEUTRALITY.

Translation of circular of April 16, 1854.

The minister of foreign affairs and the minister of justice, empowered thereto by the King, warn by these presents all inhabitants of the kingdom not to engage in any manner whatever, during the present war, in privateering, as no lettres de marque given by belligerent powers, without consent of the Dutch government, to Dutch citizens, will have any legal force.

The ministers aforesaid further announce to the public that the Dutch government, observing a strict neutrality, will not grant sanction to commissions or lettres de marque, and that, therefore, the King's subjects, and all those who for any reason whatever are subject to the laws of the kingdom who, on such documents, should engage in privateering or help thereto, can be considered by other powers as pirates and treated as such, and will be prosecuted by Dutch judges, and for crime
[576] against the *safety of the state, and for robbery on the highway.

VAN HALL.
D. DONBER CURTIUS.

THE HAGUE, *April* 16, 1854.

Translation of circular of 17th June, 1861.

[Nederlandsche Staats-Courant, Sunday 16 and Monday June 17, 1861.]

The ministers of foreign affairs and of justice, empowered thereto by the King, by these presents warn all inhabitants of the kingdom not to engage in any way or manner in privateering during the present troubles in the United States of North America, as the Dutch government (having agreed some time ago to respect the rules of sea-right, fixed upon by the *Congress of Paris of* 1856, *where among other things privateering was abolished*) will not grant sanction to commissions or lettres de marque, that therefore commissions or lettres de marque which contrary to the above-named rules will be issued to Dutch citizens will have no legal consequence whatever, and that, therefore, the King's subjects and all those subject for whatever reason to the laws of the country, who on such papers might engage in privateering or help thereto, may
[577] be considered by other nations as *pirates, and will be pros-

ecuted by Dutch judges for such acts committed as are punishable by law.

The ministers aforesaid,

VON ZUYLEN.
VAN NYEVELT.
GODEFROI.

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[578] *XI.—SWEDEN.

Ordonnance du Roi relativement à ce qui doit être observé pour la sûreté de commerce et de la navigation de la Suède en temps de guerre entre des puissances étrangères. Donnée à Stockholm le 8 *avril* 1854.

Nous, Oscar, par la grâce de Dieu Roi de Suède et de Norwège, des Goths et des Vandales, savoir, faisons: qu'ayant reconnu la nécessité, en vue des collisions qui menacent d'éclater entre des puissances maritimes étrangères, que ceux de nos fidèles sujets qui exercent le commerce et la navigation observent rigoureusement les obligations et précautions requises pour assurer au pavillon suédois tous les droits et priviléges qui lui reviennent en qualité de pavillon neutre, et pour éviter également tout ce qui pourrait en quelque manière le rendre suspect aux puissances belligérantes et l'exposer à des insultes, nous avons jugé à propos, en rapportant ce qui a été statué précédemment à cet égard, d'ordonner que les règles suivantes devront dorénavant être généralement observées:

§ 1. Pour être admis à jouir des droits et priviléges revenant au pavillon suédois en sa qualité de neutre, tout bâtiment suédois [579] devra être muni des documents qui, *d'après les ordonnances existantes [1]sont requis pour constater sa nationalité, et ces documents devront toujours se trouver à bord du bâtiment pendant ses voyages.

§ 2. Il est sévèrement défendu aux capitaines d'avoir des papiers de bord et des connaissements doubles ou faux, ainsi que de hisser pavillon étranger, en quelque occasion ou sous quelque prétexte que ce soit.

§ 3. S'il arrivait que, pendant le séjour d'un bâtiment suédois à l'étranger, l'équipage, soit par désertion, mort, maladie ou autres causes, se trouvât diminué au point de n'être plus suffisant pour la manœuvre du navire, et qu'ainsi des matelots étrangers devront être engagés, ils devront être choisis de préférence parmi les sujets de puissances neutres; mais dans aucun cas le nombre des sujets des puissances belligérantes, qui se trouveront à bord du navire, ne devra excéder un tiers du total de l'équipage. Tout changement de cette nature dans le personnel du navire, avec les causes qui y ont donné lieu, devra être marqué par le capitaine sur le rôle de l'équipage, et la fidélité de cette annotation devra être certifiée par le consul ou vice-consul suédois compétent, ou bien, en cas qu'il ne s'en trouve point sur les lieux, par la municipalité, le notaire public ou quelqu'autre personne de la même autorité, suivant les usages des pays respectifs.

[580] *§ 4. Les bâtiments suédois, en qualité de neutres, pourront naviguer librement vers les ports et sur les côtes des nations en guerre; toutefois les capitaines devront s'abstenir de toute tentative d'entrer dans un port bloqué, dès qu'ils ont été formellement prévenus de l'état de ce port par l'officier qui commande le blocus.

Par un port bloqué, on entend celui qui est tellement fermé par un ou plusieurs vaisseaux de guerre ennemis stationnés et suffisamment proches qu'on ne puisse y entrer sans danger évident.

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[1] L'ordonnance royale du 4 juin 1868.

§ 5. Toutes marchandises, même propriété des sujets des puissances belligérantes pourront être librement menées à bord des bâtiments suédois, en leur qualité de neutres, à la reserve des articles de contrebande de guerre. Par contrebande de guerre il faut entendre les articles suivants: canons, mortiers, armes de toute espece, bombes, grenades, boulets, pierres à feu, mèches, poudre, salpêtre, soufre[1] cuirasses, piques, ceinturons, gibernes, selles et brides, ainsi que toutes fabrications pouvant servir directement à l'usage de la guerre, en exceptant toutefois la quantité de ces objets qui peut être nécessaire pour la défense du navire et de l'équipage.

[581] Pour le cas où, à l'égard de la définition des objets *de contrebande de guerre, des changements ou additions devraient être introduits par suite de conventions avec les puissances étrangères, il en sera ultérieurement statué.

§ 6. Il est interdit à tout capitaine suédois de se laisser employer, avec le bâtiment qu'il conduit, à transporter, pour aucune des puissances belligérantes, des dépêches, des troupes ou des munitions de guerre, sans y être contraint par une force réelle; auquel cas il devra protester formellement contre un tel emploi de la force.

§ 7. Les bâtiments des puissances belligérantes pourront importer dans les ports suédois et en exporter toutes denrées & marchandises, pourvu que, d'après le tarif général des douanes, elles soient permises à l'importation ou à l'exportation, et à la réserve des articles réputés contrebande de guerre.

§ 8. Il est défendu à tout sujet suédois d'armer ou d'équiper des navires pour être employés en course contre aucune des puissances belligérantes, leurs sujets et propriétés, ou de prendre part à l'équipement des navires ayant une pareille destination. Il lui est également défendu de prendre service à bord de corsaires étrangers.

§ 9. Il ne sera permis à aucun corsaire étranger d'entrer dans
[582] un port suédois et de séjourner sur nos rades. Des *prises ne
pourront non plus être introduites dans les ports suédois, autrement que dans le cas de détresse constatée. Il est également interdit à nos sujets d'acheter des corsaires étrangers des effets capturés, de quelque espèce que ce soit.

§ 10. Lorsqu'un capitaine, faisant voile sans escorte, est rencontré en pleine mer par quelque vaisseau de guerre de l'une des puissances belligérantes, ayant droit de contrôler ses papiers de bord, il ne doit ni se refuser, ni chercher à se soustraire à cette visite; mais il est tenu à produire ses papiers loyalement & sans détour, ainsi qu'à surveiller que, ni depuis que son navire ait été hélé ni pendant la visite, aucun des documents concernant le navire ou son chargement ne soit soustrait ou jeté à la mer.

§ 11. Lorsque les bâtiments marchands font voile sous escorte de vaisseaux de guerre, les capitaines devront se régler sur ce qui est prescrit par l'ordonnance royale du 10 juin 1812.

§ 12. Le capitaine qui observe scrupuleusement tout ce qui lui est prescrit ci-dessus doit jouir, d'après les traités et le droit des gens, d'une navigation libre et sans gêne; et si, nonobstant, il est molesté, il a le droit
de s'attendre à l'appui le plus énergique de la part de nos ministres
[583] et consuls à l'étranger, dans toutes les justes réclamations *qu'il
pourra faire pour obtenir réparation et dédommagement; par contre, le capitaine qui omet et néglige d'observer ce qui vient de lui être prescrit pour sa route, ne devra s'en prendre qu'à lui-même des

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[1] Ainsi que plomb. Ordonnance royale du 13 sept. 1855.

désagréments qui pourront résulter d'une pareille négligence, sans avoir à espérer notre appui et protection.

§ 13. Dans le cas qu'un navire suédois est saisi, le capitaine doit remettre au consul ou vice-consul suédois, s'il s'en trouve dans le port où son bâtiment est amené—mais, à son défaut, au consul ou vice-consul suédois le plus voisin—un rapport fidèle et dûment certifié des circonstances de cette prise, avec tous ses détails.

Mandons et ordonnons à tous ceux à qui il appartiendra de se conformer exactement à ce que dessus. En foi de quoi nous avons signé la présente de notre main et y avons fait apposer notre sceau royal.

Donné au château de Stockholm, le 8 avril 1854.

OSCAR. [L. S.]

J. F. FÅHRÆUS.

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[584] **Communication officielle, insérée dans le journal "Post- och Inrikes Tidningar," le 21 juin 1856.*

Sur l'invitation qui lui a été adressée sa Majesté le Roi, sous la date du 13 courant, par son ministre des affaires étrangères, a fait déclarer que sa Majesté a adhéré aux principes du droit maritime en temps de guerre contenus dans la déclaration que les puissances qui ont pris part aux négociations de la paix ont signée à Paris le 16 avril dernier, et d'après laquelle—

1°. La course est et demeure abolie;

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi;

4°. Les blocus, pour être obligatoires, doivent être effectifs—c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'enemi.

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[585] **Ordonnance du Roi concernant l'interprétation de la* § 5 *de l'ordonnance royale du* 8 *avril* 1854, *relativement à ce qui doit être observé, pour la sûreté du commerce et de la navigation de la Suède, en temps de guerre entre des puissances maritimes étrangères, etc. Donnée au château de Stockholm le* 29 *juillet* 1870.

Nous, Charles, par la grâce de Dieu Roi de Suède et de Norwège, des Goths et des Vandales, savoir, faisons: que la § 5 de l'ordonnance royale du 8 avril 1854, relative à ce qui doit être observé pour la sûreté du commerce et de la navigation de la Suède, en temps de guerre entre des puissances maritimes étrangères, etc., ayant donné lieu à différentes interprétations, nous avons jugé bon et utile de déclarer que la restriction apportée par la dite §, au droit de transporter dans des bâtiments suédois des objets de contrebande de guerre, ne s'applique pas au cas où des objets de cette catégorie, qui n'appartiennent pas ou qui ne sont pas destinés aux puissances belligérantes, ou à leurs sujets, sont transportés dans des bâtiments suédois entre les ports des puissances neutres.

Mandons et ordonnons à tous ceux à qui il appartiendra de se conformer exactement à ce que dessus. En foi de quoi nous avons signé la présente de notre main et y avons fait apposer notre sceau royal.

Donné au château de Stockholm, le 29 juillet 1870.

CHARLES. [L. S.]

ALEX. ADLERCREUTZ.

[586] *No. XII.—BRAZIL.

[Supplemental.]

DIVERS NEUTRALITY CIRCULARS.

For English translation see United States Claims, vol. 7, p. 107.

No. 1, of 18 May, 1854.
No. 2, of 30 June, 1859.
No. 3, of 12 October, 1859.
No. 4, of 1 August, 1861.
No. 5, of 23 June, 1863.
No. 6, of 17 December, 1864.
No. 7, of 27 August, 1870.
No. 8, of 14 October, 1870.
No. 9, of 29 October, 1870.
No. 10, of memorandum of questions between Brazil, Germany, and France.

[587] *No. 1.

1ª SECÇÂO.—N.—CIRCULAR.—RIO DE JANEIRO.—MINISTERIO DES NEGOCIOS ESTRANGEIROS, EM 18 DE MAIO DE 1854.

ILLM. E EXM. SR. Tenho a honra de remetter a V. Ex. na cópia junta, o aviso que com a data de 15 do corrente mez foi por este ministerio expedido aos da justiça, marinha e guerra, communicando-lhes as resoluções que o governo de sua magistade o imperador julgou dever adoptar durante a guerra que infelizmente existe declarada entre a Grà-Bretanha e a França por uma parte, e a Russia pela outra.

Estas resoluções são as seguintes:

1ª. Que nenhum corsario com a bandeira de qualquer das potencias belligerantes poderá ser armado, ou approvisionado ou admittido com suas presas nos portos do imperio.

2ª. Que os subditos brasileiros não poderão tomar parte em armamento de corsarios ou em quaesquer outros actos oppostos aos deveres de uma stricta neutralidade.

As resoluções que ficão mencionadas são em parte fundadas no direito internacional que regula as obrigacões dos neutros em tempo de guerra, e em parte na legislação do paiz, e forão aconselhadas pelo dever, que tem o governo de sua magistade o imperador de attender aos interesses do commercio dos subditos brasileiros, e de observar na presente guerra uma stricta neutralidade.

[588] Com tudo á execução das medidas que deixo refer*idas não é isenta de difficuldades e complicações, e é isto o que cumpre acautelar.

Parece-me acertado que, antes de V. Ex. mandar proceder a respeito de qualquer navio que esteja nos nossos portos, por se dizer que está no caso da resolução do governo, que determina que nenhum corsario com bandeira de qualquer das potencias belligerantes possa ser armado, ou approvisionado ou admittido com as suas presas dentro dos portos do imperio, procure verificar a circumstancia de que o navio é corsario, ou seja à vista dos papeis de bordo ou por actos notorios de corso, que ja tenha praticado.

Estas diligencias deveraõ ser encarregadas aos auditores de marinha nos lugares em que os houver, é aos respectivos juizes de direito ou seus substitutos, aonde não houver auditores de marinha, e se pelas diligencias se provar que o navio é corsario, deverá impedir-se o seu armamento ou approvisionamento e mandar-se sahir do porto.

A entrada nos nossos portos de corsarios com presas é expressamente vedada; mas se ella se verificar por algum caso de força maior, cumpre que V. Ex. os mande immediatamente sahir do porto.

Todas as indagações que V. Ex., mandar fazer para este fim deveraõ ser reduzidas a escripto, e transmitidas depois ao governo de sua majestade o imperador.

Tenho tambem por muito conveniente que V. Ex., no caso de quaesquer indagações e medidas que tomar, proceda, tanto quanto fôr [589] possivel, de accôrdo e com conheci*mento dos agentes consulares da Grã-Bretanha e da França, tão bem como da nação a que se disser que pertence o navio, contra o qual houver suspeitas de ser corsario.

Procendendo assim, o governo de sua majéstade o imperador mostrará a lealdade e boa fé, com que deseja conciliar a rigorosa execução das medidas que adoptou com os meios de evitar difficuldades, e toda a especie de disintelligencia com os governos com quem conserva relaçoes de amizade.

A circumspecção e prudencia de V. Ex. afianção que as medidas do governo de sua magestade o imperador serão executadas sem que appareção inconvenientes no porto dessa capital.

Para que o nesmo aconteça nos outros portos da provincia aonde possão entrar embarcações estrangeiros, é indispensavel que V. Ex. exerça a mais activa vigilancia sobre as respectivas autoridades, e lhes explique as instrucções do governo de sua magestade o imperador.

Prevaleço-me da occasião para renovar a V. Ex. as seguranças da minha perfeita estima e distincta consideração.

ANTONIO PAULINO LIMPO DE ABREU,
A. S. Ex. o Sr. Presidente da Provincia de. . .

No. 2.

1ª SECCÃO.—N.—CIRCULAR.—RIO DE JANEIRO.—MINISTERIO DOS NEGOCIOS ESTRANGEIROS, EM 30 JULHO DE 1859.

ILLM. E EXM. SR.: Está no conhecimento de V. E. que o governo [590] imperial, de accordo com os invariaveis prin*cipios de sua politica externa, e bem consultando os interesses do imperio, resolveu manter-se neutrà na guerra que infelizménte sobreveiu entre a Confederação Argentina e a provincia de Buenos-Ayres.

A neutralidade do Brasil nessa contenda que o governo de sua magestade cordialmente deplora, não tem outras limitações senão as que expressão os factos vigentes, em relação ao estado oriental do Uruguay, e os que implicitamente se contèm no art. 2º do tratado de 7 de Março de 1856, celebrado entre o imperio e a Confederação Argentina.

Sua magestade o imperador houve pour bem que se recommendasse a V. Ex. a stricta observancia daquelles principios, segundo os quaes os subditos brasileiros se devem abster de toda participação ou auxilio em favor de qualquer dos dous belligerantes.

A exportação de artigos bellicos dos portos do imperio para os de Buenos-Ayres e absolutamente prohibida, ou se pretenda fazer debaixo da bandeira brasileira ou de outra nação. O mesmo commercio de contrabando de guerra deve ser vedado aos navios brasileiros, ainda que se destinem aos portos da Confederação Argentina.

Não é provavel que outro caso de violação de neutralidade, ainda além do que acima prevejo occorra nessa provincia, sem embargo porém, hei de brevemente expedir a V. Ex. instrucções mais explicitas. Entretanto V. Ex. se regulará, em qualquer occurrencia extraordinaria, pelos principios que se expressão no presente aviso.

[591] *Tenho a honra de renovar a V. Ex. os protestos da minha perfeita estima e distincta consideração.

JOSÉ MARIA DA SILVA PARANHOS,
A. S. Ex. o Sr. Presidente da Provincia de. . . .

No. 3.

1ª SECÇÃO.—N.—CIRCULAR.—RIO DE JANEIRO.—MINISTERIO DOS NEGOCIOS ESTRANGEIROS, EM 12 DE OUTUBRO DE 1859.

ILLM. E EXM. SR.: O governo imperial teve conhecimento por uma nota que lhe dirigiu a legação argentina nesta còrte de que o governo de Buenos-Ayres mandara comprar e armar em Inglaterra dous vapores para serem empregados na guerra em que está empenhado com a Confederação Argentina.

Se bem não possa o governo imperial, no caso de sahirem dos portos da Grã-Bretanha aquelles vapores e de tocarem apenas nos do imperio, em transito para Buenos-Ayros, mandar proceder á sua detenção, como foi por aquella legação solicitado, é conforme aos principios de neutralidade que se tem imposto o governo imperial naquella guerra, impedir que recebão armamento, tripolação, e menos ainda que transportem objectos bellicos para o porto de Buenos-Ayres.

Refiro-me para melhor governo de V. Ex. à circular que foi-lhe expedida por este ministerio em 30 de Julho ultimo.

Reitero a V. Ex. as seguranças da minha perfeita estima e distincta consideraçao.

[592] *JOÃO LUIS VIEIRA CANSANSÃO DE SINIMBÚ,
A. S. Ex. o Sr. Presidente da Provincia de. . . .

No. 4.

1ª SECCÃO.—N.—CIRCULAR.—RIO DE JANEIRO.—MINISTERIO DOS NEGOCIOS ESTRANEIROS, EM 1 DE AGOSTO DE 1861.

ILLM. E EXM. SR.: A luta que rompeu entre o governo federal dos Estados-Unidos Norte-Americanos, e alguns desses estados que declarārão constituir-se em confederação separada, pode trazer ao nosso paiz questões, para cuja solucão releva que V. Ex. esteja prevenido, e por este motivo recebi ordem de sua magestade o imperador para declarar a V. Ex. que o governo imperial julga dever manter-se na mais stricta neutralidade durante a guerra, em que infelizmente se achão aquelles estados, e para que esta neutralidade seja guardada cumpre que se observem as determinações seguintes.

Os estados confederados não tem existencia reconhecida, mas, havendo constituido de facto um governo distincto, não póde o governo imperial considerar como actos de pirataria os seus armamentos navaes, nem recusar lhes, com as necessarias restricções, o caracter de belligerantes que assumirão.

Os subditos brasileiros devem nesta conformidade abster-se de toda participação e auxilio em favor de um dos belligerantes, e não poderão tomar parte em quaesquer actos, que possão ser considerados como [593] hostis a uma *das duas partes, e contrarios aos deveres da neutralidade.

A exportação de artigos bellicos dos portos do imperio para os novos estados confederados fica absolutamente prohibida, ou se pretenda fazel-a debaixo da bandeira brasileira, ou da de outra nação.

O mesmo commercio de contrabando de guerra deve ser vedado aos navios brasileiras ainda que se destinem aos portos sujeitos as governo da União Norte-Americana.

Nenhum navio com bandeira de um dos belligerantes, e que esteja empregado nesta guerra ou a ella se destine, poderá ser approvisionado, esquipado ou armado nos portos do imperio, não se comprehendendo nesta prohibição o fornecimento de vitualhas e provisões navaes indispensaveis á continuação da viagem.

Não será permittido a navio algum de guerra ou corsario entrar e permanecer com presas nos nossos portos ou bahias mais de 24 horas, salvo o caso de arribada forçada, e por nenhum modo lhes sera permittido dispòr das mesmas presas ou de objectos dellas provenientes.

Na execução destas medidas, e na solução das questões que occorrerem, V. Ex. se guiará pelos principios de direito internacional, tendo em consideração as instrucções expedidas por este ministerio em 18 de Maio de 1854, guardado o pensamento da circular de 30 de Julho de 1859, com relação aos Estados-Unidos em luta com os estados confederados, e [594] communicará ao *governo imperial quaesquer difficuldades ou occurrencias extraordinarias que exijão novas instrucções.

Reitero a V. Ex. as expressões de minha estima e distincta consideração.

BENVENUTO AUGUSTO DE MAGALHÃES TAQUES,

A. S. Ex. o Sr. Presidente da Provincia de . . . .

No. 5.

1ª SECÇÃO.—N.—CIRCULAR.—RIO DE JANEIRO.—MINISTERIO DOS NEGOCIOS ESTRANGEIROS EM 23 DE JUNHO DE 1863.

Instrucções regulando a neutralidade do Brasil na luta dos Estados-Unidos da America do Norte.

ILLM. E EXM. SR.: Convindo dar maior desenvolvimento á circular deste ministerio do 1º de Agosto de 1861, que estabeleceu os principios reguladores da neutralidade que o governo imperial resolveu assumir em presença da luta dos Estados-Unidos da America do Norte, ja para explicar alguns desses principios, jà para indicar em geral os casos em que se deve julgar violada a neutralidade e os meios de a fazer effectiva; manda sua magestade o imperador declarar a V. Ex. o seguinte, para seu conhecimento e devida execução.

Pelas palavras "salvo o caso de arribada forçada" mencionadas na referida circular, deve tambem entender-se:

Que o navio não será obrigado a sahir do porto dentro do prazo [595] de 24 horas, se não houver podido effectuar *os concertos indispensaveis para que possa expòr-se ao mar sem risco de perder-se.

Se igual risco se der por causa do máo tempo.

Se finalmente for acossado pelo inimigo.

Nestas hypotheses fica ao arbitrio do governo na còrte e dos presidentes nas provincias determinar, á vista das circumstancias, o tempo dentro do qual deverá o navio sahir.

Os corsarios, ainda que não conduzão presas, não serão admittidos nos portos do imperio por mais do 24 horas, salvo o caso de arribada forçada.

As *presas* de que trata a circular do 1º de Agòsto são os navios apresados pelos belligerantes ou pelos corsarios, de modo que a pena imposta aos que conduzerem *presas* não é applicavel aos que tão sómente trouxerem objectos provenientes dellas, não podendo, porém, em caso algum, dispòr dos mesmos objectos assim como das presas.

De conformidade com a circular citada, os navios belligerantes não podem receber nos portos do imperio senão as vitualhas e provisões navaes de que absolutamente careção, e fazer os concertos necessarios para a *continuação da viagem*.

Esta disposição presuppõe que o navio vai com destino para um porto qualquer, e que só de passagem e por necessidade demanda um porto do imperio.

A presupposição da circular não se verificará, porém, se um mesmo navio procurar o porto amiudadas vezes, ou se, depois de ter re- [596] frescado em um porto, entrar *em outro logo depois, pretextando o mesmo fino, salvo os casos provados de força maior.

A frequencia, pois, sem motivo sufficientemente justificado, deve autorizar a suspeita de que o navio não está realmente em viagem, mas percorre os mares vizinhos do imperio para apresar navios inimigos.

O asylo e socorros que em tal caso se preste a um dos belligerantes poderá ser qualificado como auxilio ou favor prestado contra o outro, e portanto como quelra da neutralidade declarada.

Convem conseguintemente que um navio, que ja uma vez tenha entrado em um dos nossos portos, não seja recebido no mesmo porto ou em outro, pouco depois de haver entrado no primeiro, para receber vitualhas, provisões navaes, e fazer concertos, salvo o caso devidamente provado de força maior, senão depois de um prazo razoavel que faça crer que o navio jà se tinha retirado das costas do imperio, e a ellas regressou depois de ter concluido a viagem a que se destinava.

Por motivos identicos aos que ficão expostos, não será permittido nos portos do imperio que os navios belligerantes recebão generos vindos directamente para elles em navios de qualquer nação; o que significaria que não procurão os belligerantes os nossos portos de passagem, e por necessidade imprevista, mas com o proposito de permanecer na proximidade das costas do imperio, tomando por isso de antemão as [597] cautelas precisas para se fornecerem dos meios de continuar *em suas emprezas. A tolerancia de um semelhante abuso equivaleria a permittir que os portos do imperio servissem aos belligerantes de base de operações.

Ficando assim explicados os principios da circular do 1º de Agosto de 1861, cumpre que nos portos, bahias e ancoradouros de imperio se exija dos belligerantes a fiel observancia das seguintes condições.

1º. Os navios de guerra admittidos em um ancoradouro ou porto deverão permanecer na tranquillidade a mais perfeita, e na mais completa paz com todos os navios que ahi estiverem, ainda os de guerra, ou armados em guerra, do seu inimigo.

2º. Não poderão augmentar a sua tripolação, contractando marinheiros de qualquer nação que seja, inclusive compatriotas seus.

3º. Não poderão igualmente augmentar o numero e o calibre de sua artilharia, nem por qualquer modo aperfeiçoal-a, comprar ou embarcar armas portateis, e munições de guerra.

4º. Não pòderão pòr-se de emboscada nos portos ou ancoradouros, ou nas ilhas e cabos dos mares territoriaes do imperio, á espreita de navios inimigos que entrem ou saião; nem mesmo procurar informações a respeito daquelles que são esperados ou que devem sahir; e nem finalmente, fazer-se à vela para correr sobre um navio inimigo avistado ou signalado.

[598] 5º. Não poderão fazer-se á vela immediatemente *depois de um navio pertencente a uma nação inimiga ou neutra.

Sendo a vapor ou de vela tanto o navio que sahir como aquelle que ficar, mediará entre a sahida de um, e de outro o prazo de 24 horas. Se, porem, for de vela o que sahir, e a vapor o navio que ficar, não poderá este sahir senão 72 horas depois.

6º. Durante a sua estada no porto, não poderão os belligerantes empregar nem a força, nem a astucia para rehaver presas feitas aos seus concidadãos que se acharem no mesmo asylo, ou para libertar prisioneiros de sua nação.

7º. Não poderão proceder no porto neutro, nem á venda, nem ao resgate das presas feitas ao seu inimigo, antes que a validade da presa seja reconhecida pelos tribunaes competentes.

Fica subentendido que as infracções de cada uma destas sete condições constituirão otros tantos casos de violação da neutralidade do imperio, sujeitando os infractores ás penas que lhes forem impostas.

E para fazer effectiva a neutralidade, cohibindo e reprimindo os abusos que se practicarem, deverão ser empregados os seguintes meios.

1º. Verificar previamente a concessão do asylo, o caracter do navio, e seus precedentes em outros portos do imperio, para depois conceder ou negar a entrada e a permanencia, escassear o favor, ou redobrar de vigilancia.

[599] *2º. Marcar ancoradouro onde os navios estejão debaixo das vistas immediatas da policia, longe de paragens e circumstancias suspeitas.

3º. Mandar fiscalisar desde a entrada até a sahida, o movimento dos belligerantes, verificando a innocencia dos objectos que embarcarem.

4º. Ordenar à policia que não consinta no desembarque e venda dos objectos provenientes de presas.

5º. Impedir que se fação presas nas aguas territoriaes do imperio, empregando para isso á força, sendo necessario; e, se as presas ou objectos, dellas provenientes, entrados nos portos do imperio, houverem sido feitos nas mesmas aguas territoriaes, deverão ser arrecadados pelas autoridades competentes para se restituirem aos seus legitimos proprietarios, considerandose sempre nulla a venda de taes objectos.

6º. Não admittir nos portos do imperio o belligerante que uma vez houver violado a neutralidade.

7º. Fazer sahir immediatamente do territorio maritimo do imperio, não lhes fornecendo cousa alguma, os navios que tentarem violar a neutralidade.

8º. Finalmente, usar da força, e, na falta ou insufficencia desta protestar solemne e energicamente contra o belligerante que sendo advertido e intimado não desistir da violação da neutralidade do imperio;

ordenando às fortalezas e aos navios de guerra que atirem sobre
[600] o *belligerante que acommetter o seu inimigo no nosso territorio, e sobre o navio armado que se dispuzer a sahir antes de decorrido o tempo marcado depois da sahida do navio pertencente ao belligerante contrario.

E porque o vapor *Alabama* dos Estados-Confederados violou manifestamente a neutralidade do imperio, por ter infringido as disposições da circular do 1º de Agosto de 1861, tornando a ilha Rata em base de suas operações, pois que para alli conduziu presas, e sahiu a fazer outras, que mandou queimar depois de as haver conservado alguns dias no ancoradouro da mesma ilha; ordena sua magestade o imperador que o dito vapor não seja mais recebido em porto algum do imperio.

Renovo a V. Ex. as seguranças de minha perfeita estima, e distincta consideração.

MARQUEZ DE ABRANTES,

As. Ex. o Sr. Presidente da Provincia de . . . .

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[601] *No. 6.

1º SECÇÃO.—CIRCULAR.—RIO DE JANEIRO EM 17 DE DEZEMBRO DE 1864.—MINISTERIO DOS NEGOCIOS ESTRANGEIROS.

ILL^{mo} EX^{mo} S^{r}: Em officio de 24 do mez proximo findo communicoume o presidente da provincia da Bahia que alli chegara a galera americana "Kate Prince," procedente de Cardiff, a qual fora visitada no alto mar pelo vapor confederado "Shenandoah," cujo commandante exigira do capitão da mesma galera, para deixal-a continuar a sua viagem, que assignasse uma obrigação pecuniaria e recebesse a seu bordo quatorze prisioneiros provenientes de dous navios incendiados.

Havendo o commandante do "Shenandoah," James W. Waddell, praticado o acto de violar o sello do consulado do imperio que fechava o manifesto da galera "Kate Prince," resolveu o governo imperial que fosse vedada a entrada em todos os portos do Brazil ao dito vapor "Shenandoah," ou a qualquer outro navio commandado pelo referido Waddell.

O que levo ao conhecimento de V. E. para sua intelligencia e execução na parte que respeita a essa provincia.

Aproveito a opportunidad para renovar a V. E. as asseguranças da minha perfeita estima e distincta consideracão. A. S. E. o Sr. presidente da provincia de . . . . (ass.)

[602] *JOÃO PEDRO DIAS KEIRA.

Conforme.

O. director leval interino, ALEXANDRE AFFONSE DE CARVALHO.

No. 7.

1ª SECÇÃO.—N.—CIRCULAR.—RIO DE JANEIRO.—MINISTERIO DOS NEGOCIOS ESTRANGEIROS, EM 27 DE AGOSTO DE 1870.

ILLM. E EXM. SR: A legação de sua magestade o imperador dos Francezes notificou ao governo imperial, por nota de 14 do corrente, a guerra que rebentou entre a França de um lado e de outro a Prussia e os paizes alliados que dão á esta o concurso de suas armas.

A mesma legação solicitou, e o governo de sua magestade acaba de declarar-lhe, que o Brasil observará a mais stricta neutralidade durante essa guerra, assim para com a França, como para com o outro belligerante e seus alliados.

O governo frances promette que suas forças de mar e de terra observarão escrupulosamente para com as potencias neutraes as regras do direito internacional e os principios estabelecidos pelo congresso de Pariz em sua declaração de 16 de Abril de 1856.

O Brasil adheriu, como V. Ex. sabe, a aquelles principios, e tem [603] portanto direito a que os navios *brazileiros e suas mercadorias gozem das garantias por elles asseguradas.

Os principios a que alludo são os seguintes:

1°. O corso é e fica abolido.

2°. O pavilhão neutral cobre a mercadoria inimiga, com excepção do contrabando de guerra.

3°. A mercadoria neutral, com excepção do contrabando de guerra, não póde ser apresada sob o pavilhão inimigo.

4°. Os bloqueios, para serem obrigatorios, devem ser effectivos, isto é, mantidos por força sufficiente para prohibir realmente o accesso ao littoral inimigo.

A Prussia fez parte do ultimo congresso de Paris, e consequentemente está obrigada ás mesmas regras de moderação e benevolencia para com os estados neutraes na presente guerra.

Em conformidade do que levo exposto, cumpre que V. Ex. previna ao chefe de policia dessa provincia e ás respectivas autoridades fiscaes, mandando inserir esta circular na folha que publicar os actos officiaes, e podéndo por qualquer outro meio que julgar conveniente fazer constar aos subditos brasileiros ahi residentes esta deliberação do governo de sua magestade, a fim de que todos se abstenhão rigorosamente de actos oppostos aos deveres de uma stricta neutralidade.

[604] Em quanto o governo imperial não expedir *instrucções especiaes, deverá V. Ex. guiar-se pelas circulares do 1° de Agosto de 1861, e 23 de Junho de 1863, no que for applicavel ao caso de que se trata.

Tenho a honra de renovar a V. Ex. os protestos de minha perfeita estima e distincta consideração.

BARÃO DE COTEGIPE,

A. S. Ex. o Sr. Presidente da Provincia de. . . .

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[605] *No. 8.

1ª SECÇÃO.—N.—CIRCULAR.—RIO DE JANEIRO.—MINISTERIO DOS NEGOCIOS ESTRANGEIROS, EM 14 DE OUTUBRO DE 1870.

ILLM. E EXM. SR.: Sua magestade o imperador houve por bem resolver que, na presente guerra entre a França e a Prússia, sejão mantidas as circulares deste ministerio de 1 de Agosto de 1861, 23 de Junho de 1863 e 27 de Agosto ultimo, com o seguinte additamento:

1°. Os navios dos belligerantes tomarão combustivel nos portos do imperio unicamente para a continuação da viagem.

É prohibido o fornecimento de carvão aos navios que percorrerem os mares vizinhos do Brazil para apresar embarcações do inimigo ou praticar qualquer outro genero de hostilidades.

Ao navio que uma vez receber combustivel em nossos portos não se permittirá novo fornecimento senão quando houver decorrido um prazo razoavel, que faça crer que o dito navio regressou depois de concluida a sua viagem a um porto estrangeiro.

2°. É prohibido annunciar pelo telegrapho a partida ou a proxima chegada de algum navio, mercante ou de guerra dos belligerantes ou dar a este qualquer ordem, instrucções ou aviso, tendente a prejudicar o inimigo.

[606] *Neste sentido V. Ex. deverá expedir as convenientes ordens as estações dos telegraphos e aos alviçareiros.

Aproveito a opportunidade para reiterar a V. Ex. as seguranças de minha perfeita estima e distincta consideração.

VISCONDE DE S. VICENTE,

A. S. Ex. o Sr. Presidente da Provincia de .....

No. 9.

RIO DE JANEIRO.—MINISTERIO DOS NEGOCIOS ESTRANGEIROS, EM 29 DE OUTUBRO DE 1870.

No intento de regular o disposto na condição 5. da circular de 23 de Junho de 1863, cumpre que, durante a guerra entre a França e a Prussia, sejão observadas as seguintes providencias:

1ª. Os navios de commercio de um dos belligerantes, que quizerem sahir do porto, deverão dar aviso por escripto, com a antecedencia de 24 horas, ao commandante da estação naval do dia e hora em que tem de sarpar. No aviso declararão se são a vapor ou de vela.

2ª. O commandante da estação naval, se não tiver sido prevenido da sahida de algum navio de guerra do outro belligerante, mandará intimar [607] *aos respectivos commandantes, que não poderão deixar o porto senão depois de passado o tempo da sobre dita condição 5ª. Fará alem disso, os necessarios avisos ás fortalezas e embarcações de registro.

3ª. Os ditos navios mercantes não deverão sarpar sem que tenhão resposta, por escripto, declaratoria de que estão dadas as devidas providencias, e que portanto podem retirarse. A resposta será dada com toda brevidade.

4ª. Nos lugares onde não houver commandante de estação naval, o aviso das embarcações mercantes será dirigido ao capitão do porto; na falta deste ao commandante da fortaleza de registro; e, não havendo fortaleza, ao de qualquer navio de guerra brasileiro que ahi se ache; e, em ultimo caso, á maior autoridade policial da localidade.

O funccionario a quem o aviso nos sobreditos termos fôr dirigido, é o competente para fazer a intimação aos navios de guerra belligerantes.

5ª. Os navios de guerra dos belligerantes, que não quizerem ter a sua sahida impedida pela retirada successiva das embarcações mercantes ou de navios de guerra contrarios deverão communicar, com anticipação de 24 horas nos termos sobreditos, a pretenção da sua retirada. A prioridade da saluda será regulada pela da entrega do aviso.

[608] *6ª. Além do que fica disposta, os navios de guerra não poderão deixar o porto sem que primeiro entrem as embarcações mercantes do outro belligerante, que estejão á barra, ou tenhão sido annunciadas pelo telegrapho, ou pelos alviçareiros, salvo se derem os respectivos commandantes sua palavra de honra ao commandante da estação naval, e na sua falta ao funccionario competente, de que não lhes farão mal algum; e se, além disso, não estiverem impedidos de sahir por outro motivo.

VISCONDE DE S. VICENTE.

[609] *No. 10.

MEMORANDUM OF QUESTIONS BETWEEN BRAZIL, GERMANY, AND FRANCE.

A relation of the facts and *résumé* of the correspondence between the Brazilian government and the French and North German legations in Brazil, in relation to the alleged violation of the neutrailty of Brazil, and abuse of the right of asylum accorded by her to the vessels of war, and their prizes, (with a delay of twenty-four hours,) by the bringing into Rio de Janeiro on the 14th September, 1870, of the North German merchant-vessels Lucie and Concordia captured by the French gun-boat Hamelin, and left in the harbor of Rio, for the purpose (as alleged) of discharging goods on board belonging to neutrals, (which was done,) and by the leaving said vessels in said harbor, in charge of only one mariner on board of each, taken from another French vessel in port, and under the care of the French consul; and by the coming in afterward of the French gun-boat Bruix, from whom men were sent and placed on, and in charge of, said vessels, which were then taken out of the harbor under convoy of said Bruix, October 22, 1870.—(From the Relatorio (Foreign affairs,) 1871.)

[610] *On the 14th of September, 1870, two German merchant-vessels, the Lucie and the Concordia, were by officers in charge brought into the harbor of Rio as having been captured by the French gun-boat Hamelin, as her prizes of war.

The entry of such vessels under such circumstances was permitted by the Brazilian circulars of August 27, 1870, in which reference was made to those of August 1, 1861, and June 23, 1863, and a permission to remain twenty-four hours accorded. The necessity of leaving at the expiration of that period was notified to the commanding officers of the prizes.

It appearing, however, that on board of the German vessels were goods of neutrals, the imperial government admitted that, under the principles laid down by the congress of Paris, 1856, more time would have to be allowed, in order to permit the unloading of such neutral goods, and that as soon as this could be effected, the vessels must leave. The German legation at once claimed that Brazil was bound to restore those vessels to their owners and to exclude the Hamelin from the ports of Brazil; because,

1st. The Concordia had been captured in Brazilian waters, in violation by France of Brazilian neutrality.

[611] *2. Because the Hamelin having left Rio on the 14th August, and returned on the 14th September, had not, in the interval, entered into any French port, nor into any neutral port, but had evidently been lurking in the ports and under islands off the coast of Brazil. And on the 17th September the same (German) minister claimed the release and restoration of the other vessel (Lucie) on the same grounds.

The French legation, on the other hand, declared that the prizes had been taken six miles and sixty meters distant from the Marica Islands, and on the high seas, outside the territorial jurisdiction, and that the Hamelin having left Rio for Montevideo, on the 14th August, had entered the last-named port on the 20th; left there on the 2d September, and returned to Rio on the 13th September.

The Brazilian minister of foreign affairs then addressed a letter of inquiry to the president of the province of Rio de Janeiro, requiring him to make inquiry and take proofs, who "some time afterward" answered that nothing could be proven; notwithstanding every effort and search, up and down the coast, for persons who must have seen the fight or attack, (in case it had taken place so near land as alleged,) and that the Hamelin had not been in any Brazilian port, and had not been seen hovering on the coast. The Brazilian government therefore concluded that there [612] *had been (then) no violation of Brazilian neutrality by the act of the Hamelin, and that it could not comply with the demand for restoration; nor for the exclusion of the French capturing vessel from the Brazilian ports, during the continuance of the war. This exclusion was afterward ordered, for other reasons, as stated below.

The German legation in Brazil then objected to the admission into Brazilian ports of prizes of German vessels under the above circulars, as of itself a breach of neutrality, which, rightly understood and practiced, would equally exclude all vessels claimed as prize by either belligerent; and especially since the German government had given orders not to capture merchant-vessels belonging to the enemy, by the order of July 18, 1870.

The Brazilian government replied that this new rule or order was one which was not obligatory on any power who did not acknowledge its principle, and that no change of the rule of neutrality (which admitted prizes of both belligerents with delay of twenty-four hours) could be accepted, unless admitted by the other belligerent, and agreed to by this government also; which, when it laid down the rules for conduct to its officers and agents, in its circulars, could not, and did not, know the new exception introduced, or proposed by the German government. [613] Besides (as *since appears) the decree of 18th July, 1870, was afterward revoked by another, issued (at Versailles) by the same government, in January, 1871.

The (Brazilian) circulars of 1861 and 1863, which were thus objected to by the (Prussian) N. G. government, were objected to also by the French, and for reasons quite as unsound; for (the French chargé stated) those circulars imposed restrictions on the freedom of action of the French naval forces. France maintained a large navy; the Germans none. This last had a large army; the French army was not so numerous. France thus diverted to the enlargement and maintenance of her navy large sums, which, in case no such armament existed, might have gone to the increase of her army. That government, therefore, which, by its acts, under form of preserving its own neutrality, limited or restrained the efforts of the French naval force upon its enemy's commerce, in effect, assisted that enemy.

The Brazilian government answered that both France and Germany, by their reclamations, attempted to set up a new rule of neutrality, namely, that a neutral power should formulate the conditions of its neutrality according to the distribution and organization of the land and sea armaments of the respective belligerents. It is needless to point out that the attempt to enforce such a novel regulation [614] *would at once involve the neutral in the great difficulty (among others) of requiring the condition of neutrality to change with the alternating vicissitudes of war. The Brazilian government, therefore, would maintain the attitude in which it had placed itself, which was justified by the principles maintained before the outbreak of the Franco-German war, and which had been sustained by the positions assumed by the French government and by the decrees in French courts of prize.

The discharge of merchandise belonging to neutrals on board the Lucie was completed on the 24th September, (1870.) The chief of police was therefore directed to notify the officer in charge of that vessel, as well as the officer in charge of the Concordia, as soon as she had landed such goods from the cargo; and the fact of such order having been given was made known also to the French legation in Rio.

At the expiration of the time allowed, and thus prolonged, and notwithstanding the declaration of the French chargé that the Hamelin (the captor) would conform to the notice, it was not complied with. The Hamelin had left the port on the 23d of September, having left on board the two captured vessels in the harbor an insufficient number of men to navigate them.

[615] *The German minister at once declared this condition of facts to the Brazilian government, and protested against any attempt to increase the number of men while in this harbor. The French chargé directed the French consul to order the departure of the Lucie, and of the Concordia, as "soon as certain repairs had been made, which were indispensable to the prosecution of her voyage," and asked a further prolongation of time therefor.

The Brazilian government declined, stating that the delay of twenty-four hours allowed by the rules of neutrality, and permitted by their instructions, could be prolonged only in case of forced arrival, (by stress of weather,) and to discharge goods on board belonging to neutrals. In fact, when the Hamelin left, on the 23d of September, she had placed on board each one of her prizes one man sent by the French consul, and taken from on board a French merchant ship in the harbor, the Mineiro. Any increase of armament, or addition to their crews, would not be allowed, (and besides, the Hamelin had already, by taking back on board the prize-masters and crews which she had placed on board those vessels at the moment of capture here, augmented her own crew by an addition, in this port, to the number on board of her when she entered.)

[616] *The French consul then (in a note to the chief of police) asked permission to place on board the prizes five men, taken from other French vessels, who should assist only until they had passed the bar, and should return in the tug-boat which was to tow them out. The French chargé, then, also discovered that the second condition (case mentioned and provided for) in the Brazilian circular of 1863 was not applicable to prizes, but only to vessels of war; and that since, before the war, a French merchant vessel would be entitled to engage and receive on board such number of men as might be necessary to continue her voyage, to refuse it now to the Lucie and Concordia (the captured vessels) would be a violation of that admitted right, and asked a further delay, in order to be able (to assure the safe departure) to get the vessels safely to sea.

The Brazilian government refused, and said that the prohibition upon new armament or increase of crew applied to such vessels as the Lucie and Concordia, and must, since otherwise any vessels of war, capturing many merchantmen, and weakening her own force by the distribution among them, from her own company, of prize-master and crews, could come into a neutral port, there deposit her prizes in safety, without crews, receive back her own, and again go to sea to repeat such maneuvers.

[617] *It then appeared that the French chargé was about to permit, if not to authorize, the act (declared by the French consul to the chief of police) to tow the prizes out to sea by a French gunboat, which he had sent for, and asked from the commander of the French naval forces on this station. Whereupon the Brazilian government notified the French legation that these vessels would not be

permitted to leave this port, even in tow of a French vessel of war; and this resolution was also made known to the German minister.

The French legation, on the 7th October (mark, the prizes had entered on the 14th September, and the discharge of goods belonging to neutrals was accomplished by the Lucie 24th September, and the Concordia) protested against such order, and said:

> If Brazil does not wish to receive into her ports vessels captured as prize of war, she should have so declared in her answer to my notification (of the declaration of war between France and North German Union) on the 14th August last, and should, at the time of their coming in, objected to the admission of the Lucie and Concordia. Once received into this port it would be too late to apply to them rules which were only made known to me on the 16th of September, (after their arrival,) and which could not be allowed to have a retroactive effect. Admiral Fisquet has just written
> [618] me that he will send to Rio the *dispatch-boat Le Bruix to take away the prizes.
>
> I therefore beg your excellency will give orders to allow their departure, it being understood that on board the captured vessels there shall be placed no men enlisted or engaged in Rio de Janeiro.

The Brazilian government answered with a recapitulation of dates, and a narration of occurrences in this matter, and stated that the Hamelin had come in with her prizes, under the privilege accorded to belligerents by a neutral power, and was, therefore, to be held to strict compliance with the requirements and conditions of such permission; that the time for stay, limited to twenty-four hours, was known to the commander of the Hamelin before his arrival; that such stay was prolonged simply for the benefit of those neutrals whose goods were laden on the prizes; that the Hamelin had departed, with persons on board taken from the prizes, (French, and of her own crew,) and that these prizes had, in fact, remained long beyond the time allowed, and because the captors had not placed on board a crew sufficient to take charge of them; that the French commander had gone out to communicate, probably, with the admiral, and to bring from the fleet aid to make valid the possession of the prizes, which aid it was proposed to put on board (though not recruited) within this harbor; that thus, in fact
[619] *and effect, there had been either an abandonment of prize in this port, or else there was an attempt to make a neutral port a place of deposit for the safe-keeping of vessels captured, and before, and in delay of, their being adjudged good prize of war by a competent tribunal; that by all this a violation of the neutrality of Brazil had occurred; but that this government (Brazil) would proceed only after consultation of the council of state; that, under these circumstances, the departure of Le Bruix could not be allowed with those vessels. Orders were, on the 10th October, issued to the captain of the port to take precautionary measures to prevent any accident, and this was notified to the French legation. On the 11th that legation answered that it persisted in considering the captured vessels good prize, until it was otherwise declared by a competent court (conseil de prises;) that, in order to take away any pretext (sic) from the Brazilian government's undertaking to assume possession of the two vessels, he had asked the commandant of Le Bruix to place on board (in this harbor, of course) a crew sufficient for handling the vessels in the port, and to prevent an accident (by reason of swinging at anchor among other vessels;) that the Bruix would, at once, get ready to take these prizes to sea; and
[620] that, if his (your) excellency wished to *assume the great responsibility of preventing such departure by force, his excellency had only to give order to the forts to fire upon the vessel. The Bruix will stop at the first gun. The French government will afterward decide how this act of hostility by the Brazilian government shall be responded to. The Brazilian government answered, by informing the

French legation, that on next day (14th October) a guard would be placed on board the two vessels, Lucie and Concordia, and an inventory taken in presence of Brazilian agents, and of the French consul if he chose to be present.

The French dispatch-boat Bruix came into port on the 13th October, and the French consul was notified by the chief of police that no persons could be placed on board the prizes from the Bruix. Nevertheless, a number of men from the Bruix were placed on board those two vessels, and preparations made to depart with them. Against this the Viscount São Vicente (Brazil) protested, as a new violation of neutrality and of the police of the port. The German minister (Mr. de St. Pierre) also protested to the Brazilian government against such action being permitted, and against the departure of the captured vessels.

The report of the minister of foreign relations then states that the final resolution taken by the Brazilian government was made
[621] known to both *legations as follows:

> The imperial government having duly considered the means of making available its rights, has preferred those which conform to its own regulations, and the principles acknowledged in the law of nations, and with usages which prevail. It therefore declares to M. le chargé d'affaires:
>
> 1. That the steamer Hamelin will not be admitted into any port of the empire hereafter during the war between France and Prussia, and orders will be sent, to secure that end, to the different ports and officers.
>
> 2. That the imperial government protests to and will claim from the French government the proper reparation for the violation of its rights of sovereignty in relation to asylum and neutrality, and for the consequence therefrom resulting.
>
> 3. That to this end orders will be given, so that the prizes above mentioned can depart from this port with the crews improperly placed on board them from the Bruix. They must depart within twenty-four hours, dated from the notice which will be sent to-day to the commander of the Bruix. It must also be noticed that since a German (sailing) merchantman left this port to-day at 2 o'clock, the Bruix cannot be allowed to depart until after the expiration of the seventy-two hours prescribed by the 5th (condition) case provided for in the circular of 23d June, 1863.

[622] *The French chargé protested against the exclusion of the Hamelin because, in his judgment, that vessel had brought her prizes into Rio only out of consideration for, and for the purpose of, discharging the merchandise on board such prizes belonging to neutrals.

The German minister protested anew against the permitted departure of the German vessels as prizes of the French vessel of war, and said "he would inform his government of the unsatisfactory result of his efforts to obtain from Brazil a decision in those respects in accordance with the duties of a neutral state."

In connection with this, a question afterward arose as to the proper parties to whom should be paid the freight due by the (neutral) owners of goods landed here from these two German vessels. The French chargé submitted this question to his government, which answered that the (French) consul should deliver the goods to such neutral owners who would sign a declaration obliging themselves to pay the amount of the freight to the French government, if it should, after an understanding with Brazil, decide that it was due to the captor.

The French chargé had complained that the North German consul had made a visit and search on board the two vessels, going in
[623] his uniform, and in a *boat having his flag hoisted, and at the moment when the crew in charge had retired, after discharging neutral goods, and while a guard (one man) only had remained on each vessel.

The Brazilian government objected to the proceeding by the North

German consul, and the North German minister explained it in the following manner:

> The consul, Mr. Haupt, for reasons of duty, having to visit the German vessel Fetisch, anchored in this port, and passing on his way to that vessel the Lucie and the Concordia, thought he would, on his way, ask the two French sailors belonging to the Mineiro and the Brazilian officer (employé) some questions in relation to those two vessels, Lucie and Concordia. He did not go on board, as alleged.

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[624] FRENCH PASSPORTS TO PERSONS RECRUITED IN RIO FOR THE FRENCH MILITARY SERVICE NOT VISÉD BY THE POLICE HERE TO PREVENT DEPARTURE OF SUCH PERSONS.

Eighteen passports, viséd here on the 17th October, 1870, by the French consul in Rio de Janeiro, and having on them stated in the *visé* that the bearer of such passport was "engaged to enter the military service of France, and was held to present himself to the proper authority," were presented at the office of the chief of police in Rio, in order to have issued the corresponding permit of departure. The chief of police refused to grant the *pase* to the bearers of such passports, and his action was approved by the Brazilian government, who directed him to inform the French consul that such recruitments or engagements to enlist, made here, on neutral territory, were in violation of the laws and neutrality of Brazil, and that such persons so enlisted could not be allowed to depart.

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[625] *MEMORANDA AS TO THE MIRANDA EXPEDITION.

Though projects of hostility, some of them for plunder, some for permanent conquest, had been undertaken during the wars between this country and Spain, against particular parts of her transatlantic dominions, the first time, we believe, that a general scheme of emancipation was presented to the mind of a British minister was in the beginning of 1790, when the measure was proposed to Mr. Pitt by General Miranda. It met from that minister with the most cordial reception; and as the dispute respecting Nootka Sound was then subsisting, it was resolved, if Spain did not prevent hostilities by submission, to carry the plan into immediate execution.

When an accommodation was effected and peace at last decreed, Mr. Pitt still assured the general that the scheme of emancipating South America was a measure that would not be lost sight of, but would infallibly engage the attention of every minister of this country.—(See page 13, "Documents Historical and Explanatory," concerning the several [626] expeditions of General *Miranda, by T. M. Ontepara. London, 1810.)

Extracts from Dodsley's Annual Register for 1807.

* * * General Miranda, with the knowledge and a good understanding between him and the British government, set out from England for the purpose of carrying into execution, if possible, his long-cherished project of emancipating Spanish America.

He proceeded to the United States of America for the purpose of procuring that assistance, which, from the assurance he had received while in this country, he had every reason to expect, particularly at a period when there was every prospect of a war between the United States and Spain, on account of a dispute about Louisiana. But on his arrival he had the mortification to find that the dispute about Louisiana was compromised, and that although the wishes of the American, like those of the British government, were for him, he could not expect their avowed assistance. The general, however, animated by that persevering ardor which is inspired in great minds by great designs, induced, on terms agreed on, Mr. Ogden, a merchant of New York, to fit out a ship, the Leander, Captain Lewis, with two hundred young men of great respectability, who volunteered their services, and to proceed with her [627] to St. Domingo for the purpose of being joined by a *second vessel, the Emperor, commanded by another Captain Lewis, brother to the master of the Leander. Unfortunately, soon after the departure of the Leander from New York, the American Government, giving way to the urgent solicitations of the French and Spanish embassadors, brought an action against Mr. Ogden and a Colonel Smith, a zealous friend to the cause of General Miranda, on the plea that the equipment of the Leander was unauthorized and illegal. The parties prosecuted were honorably acquitted. But the first consequences of the trial were of incalculable detriment to General Miranda's expedition, for the master of the Emperor having heard, while at St. Domingo, that an action had been brought against the parties just mentioned, absolutely refused to proceed on its destination. It now became necessary to engage, instead of the Emperor, two small schooners. The general, however, though thus cruelly disappointed in the expectation of being joined by the armed ship Emperor, of about thirty guns, proceeded with his little squadron for the coast of Caracas; where, as he supposed that the Spanish government still continued ignorant of his movement, he hoped to effect a landing without opposition.

The Spanish embassador, however, having obtained information of this enterprise, sent advice thereof to the governor of Caracas, [628] where General Miranda, *instead of meeting, as he expected, with none but friends, apprised of his approach, had the mortification to learn that the government of Caracas had given the necessary orders for taking measures of defense, and where his two schooners unfortunately fell into the hands of the Spanish guardacostas. In these circumstances General Miranda sailed directly for Trinidad, for the purpose of procuring a British auxiliary force. Admiral Cochrane, then commanding on the Windward station, assured the general of support, in both ships and men, and immediately ordered some sloops-of-war and gun-boats to proceed with him on the expedition. Thus re-inforced at Trinidad, the general set sail from thence, on the 24th of July, 1806, again for the coast of Caracas with his little fleet, now consisting of about fifteen vessels in all, and having on board about five hundred officers and men, all volunteers. On the morning of the 2d of August his little army effected its landing at a place called Vela de Coro; but the smallness of his force prevented confidence in his success. The people dreaded the cruel vengeance of the Spanish government in the event of his defeat; and as the captain-general of Caracas was collecting troops, General Miranda retired from Coro and removed his headquarters to the shore, having previously assured the people in a proclamation [629] of his just and friendly intentions, *and that "it was not in the city but in the field that he and his army wished to fight with the op-

pressors alone of the Colombian people." From thence General Miranda dispatched an officer, Captain Ledlie, to our naval and military commanders on the Jamaica station to represent his prospects, the absolute necessity there was for a force sufficient to give confidence to the South American people, and to request that this aid might be sent to him without delay. Sir Eyre Coote and Admiral Dacres regretted that they were precluded from giving the assistance which his views demanded, as they had not received any official instructions from home on this subject. Admiral Dacres, however, gave orders to his cruisers to afford every possible protection. Captain Ledlie immediately returned with this answer to General Miranda, who, after dispatching that officer to Jamaica, had proceeded himself with his troops to Aruba, a few leagues from Vela de Coro, with an intention to seize the strong post of Rio de la Hache, and there await the arrival of succor. Soon after Admiral Cochrane sent him a ship of the line with two frigates, with the reiterated assurances of support; but erroneous reports having reached the West Indies that preliminaries of peace between England and France had been signed by Lauderdale at Paris, and these reports ac-
[630] companied with *an intimation that Admiral Cochrane would consequently be obliged to entirely withdraw the aid of the naval force, General Miranda found himself under the necessity of abandoning all further operations on the Spanish main, and retired, with his comrades in arms, to Trinidad.—(See the Annual Register for 1807; London, 1809.)

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[631] *Admiral Cochrane to General Miranda.*

NORTHUMBERLAND, CARLISLE BAY,
Barbadoes, *June* 9, 1806.

SIR: Whereas you have represented to me that, in carrying into effect the expedition under your command, you have met with some difficulty from the defection of the force you expected to join at St. Domingo; and conceiving it may be mutually advantageous to Great Britain and the provinces of South America, which you are about to attempt to liberate from the dominion of Spain, and having received your statement of the various plans that, from time to time, have been in agitation between you and the British ministry, in all of which the same object has been kept in view, but, from particular circumstances incident to the moment, they have not yet been carried into effect:

In consideration thereof, and judging that I may thereby promote what seems to have commanded the attention of the British government, I agree to support your landing in any part of America between Trinidad and the coast opposite to the island of Aruba, with such a naval force as I can afford, which will be at least a sloop-of-war and two brigs, and perhaps a frigate, if one can be spared from the atten-
[632] tion I must necessarily *give to the convoys and protection o
the colonies within the district of my command. I do, however assure you of such further support as it may be in my power occasionally to give, and, should a Spanish naval force arrive in those seas, I will use my best endeavors to prevent them doing any injury. At the same time I am free to confess that, while I grant you such essential support, and the permission you have received to recruit your forc here as well as at Trinidad, I do expect that, in the event of your being successful, and any of the provinces on the main become independent of Spain, that you engage, in their name, to grant to Grea

Britain positively, and to no other power, (the United States of America excepted, if you should so incline,) the same privileges of trade as the inhabitants of the said provinces; that is to say, that the vessels belonging to or subject to any other power or state, who are not now giving aid to this expedition, shall not enjoy the same immunities with Great Britain, and that they shall be subject to an additional duty of ten per cent. on all goods that they either import or export over and above that to be paid by Great Britain, and that none of the coalesced powers acting against Great Britain, or that may hereafter become so during the present war, shall be permitted to enter or trade with any of the ports of the said provinces; that this agreement shall sub-[633] sist and be *enforced until a treaty of commerce shall be concluded between Great Britain and the provinces so liberated from the Spanish government, for which purpose commissioners shall be nominated by each party within twelve months after the definitive treaty between Great Britain and the powers now at war with her shall be signed.

It is further agreed that British subjects shall, in every instance, be assisted by the government of the said provinces in the recovery of their legal and just debts, and that, in security thereof, they shall hold lands, houses, or estates, under the same privileges with the natives of the said provinces; and that they shall be suffered to sell and dispose of the said property, both real and personal, in like manner with them, and that, in so doing, they shall not be subject to any tax, duty, or imposition whatever.

It is also to be understood that consuls or vice-consuls may be appointed to such provinces, cities, towns, &c., as the British government may think proper, enjoying every privilege or immunity now granted to consuls belonging to Great Britain by the most favored nations of Europe.

I have the honor to be, sir, your most obedient, humble servant,

A. COCHRANE.

General MIRANDA, *&c., &c.*

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[634] **General Miranda to Admiral Cochrane.*

BARBADOES, *June* 9, 1806.

SIR: Having deliberately perused the foregoing proposals, I hereby bind and oblige myself, as far as my authority can extend, to see the same carried into execution; and that, to all intents and purposes, the same shall be ratified and made binding on those provinces that may become independent of Spain.

I have the honor to be, sir, your most obedient, humble servant,

F. DE MIRANDA.

Rear-Admiral the Hon. A. COCHRANE,
Commander-in-Chief, &c., &c., Barbadoes.

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[635] **Extracts from the History of Don Francisco de Miranda's attempt to effect a revolution in South America. Boston*, 1808.

* * * * * 12th, 8 o'clock a. m.—At this moment a cry from a man stationed at the mast-head announces a sail in sight; she is too far distant, however, to enable us to distinguish what kind of vessel. I

notice it creates considerable anxiety on board, particularly with the general. We shall probably know something more of this strange sail before long, as she is sailing nearly in a line with us; is somewhat to leeward, but if disposed, may speak us in two or three hours. 11 o'clock a. m.—The strange vessel turns out to be a large vessel in pursuit of us. Captain Lewis has shortened sail to let her come up. If she is French or Spanish, she will probably speak to us in harsh language, and we shall be obliged to fight. God knows what our fate would be if captured, for I believe we must appear to them a suspicious set, who are on the high seas in a very questionable shape. If she is English, perhaps "all may be well." I must conclude, as we are going to pre- [636] pare *for action. Our sea commander says, "If she is an enemy we must overcome or perish."

13th.—The affair is settled very much to our satisfaction; but not without a thousand alternate hopes and fears. Within four hours after my last, we expected to be now making the best of our way to Bermuda, under the lee of a British frigate. Yesterday, at half past one o'clock in the afternoon, we were spoke by the ship seen in the morning; she proved to be His Britannic Majesty's ship Cleopatra, of forty guns, commanded by Captain John Wight. The first lieutenant of the frigate came on board and examined our ship and crew. We were detained nearly twenty-four hours, and had nineteen men pressed, mostly Irish, with American protections. As a kind of return for the impressed sailors, we received twelve Americans, who had been taken out of American vessels lately captured by the Cleopatra, to the list of which the Leander was nigh being added. Captain Lewis went on board with the ship's papers, which showed her to be the Leander, an American ship bound to St. Domingo. These were, on examination, declared by Captain Wight to be unsatisfactory.

[637] A gentleman then by the name of Armstrong *went on board with instructions from the general, and joined with Lewis in expostulating with the commander of the frigate, but without effect. At last the general himself was obliged to appear on board the Cleopatra. He stated certain particulars to Captain Wight, and showed him documents which justified the English captain in allowing our ship to proceed. This event has confirmed our impressions respecting the nature and objects of this expedition. General Miranda, I think, must have effected the release of the Leander by explaining a part or the whole of his plan relative to South America, and by producing credentials from the British government authorizing, or at least protecting him in the undertaking.

This idea is strengthened by Miranda saying that Captain Wight had promised to assist in the enterprise. The general remained on board the frigate all night, and returned this morning at eleven o'clock. I am extremely glad we were overtaken by this ship, for the result tends to put us at ease about the consistency of our design with the laws of nations, and proves to the world that we are not a "band of desperate pirates," a description given to us by some persons before we sailed from New York, and propagated afterwards in whispers through the ship. Besides, the expedition is now placed on a respectable footing by [638] *having, as we presume, the acknowledgment and countenance of England. We are all in high spirits and in high hopes. The general now speaks more openly about the enterprise; he expresses great anxiety to begin his operations, and complains of having been so long detained in a good wind, notwithstanding it has turned out so much to the advantage of his project, both on account of the promised assistance, and a certificate that he procured of Captain Wight, to prevent further search or detention by other British cruisers which we may happen to meet.—(Pages 10, 11, 12, 13.)

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[639] *GRENADA, *May* 20, 1806.

* * * * * On the 24th, at evening, we saw two vessels, one a large ship, which we endeavored to avoid by tacking; but the next morning the same ship being found in chase of us, it was resolved to run no more. It was at length admitted that we might as well die by sword as famine. When the ship had got nearly within gunshot, we being to windward did not bear down, and she fired upon us, but without her shot reaching us. Lewis, being persuaded she was English, hove to and she came up. Seeing a French distinguishing vane at her mast-head, we began to flutter. But on speaking us, she proved to be His Britannic Majesty's sloop of war Lily, who had been for some time searching for the Leander. The commander, Captain Campbell, came on board to pay his compliments to General Miranda, and on returning to his vessel sent us some most necessary and most welcome supplies. It was determined that we should put into this island, where we arrived the next day. The general and suite disembarked the moment the ship anchored; and several officers were allowed to step on *terra firma* and partake the comforts of the shore. * * *

The governor of this island, Maitland, has received our chief with great politeness and hospitality, and given him encouragement to expect important assistance from the British in a second attempt upon the Spanish main. As an earnest he is answerable for our supplies. [640] *These circumstances a little revive the spirits of our volunteers, who had become rather sick of their undertaking and disposed to abandon Miranda.—(Pages 92–94.)

BRIDGETOWN, BARBADOES, *June* 9, 1806.

* * * * We arrived here the 6th. The rumor among us is such as to make us suppose the expedition is to raise its head again. Admiral Cochrane, who is on this station with three ships of the line and several frigates, intends to further it by putting some of his smaller vessels under the orders of Miranda. No regular troops and but few volunteers will be joined to it here; but it is said they will be obtained at Trinidad.

15th. It is reported that though Admiral Cochrane is favorable, Lord Seaforth, governor of this island, and General Bowyer, commander-in-chief of the West India troops, are not at all inclined to take up our enterprise. Twenty-five or thirty volunteers have joined us here. In this number may be half a dozen gentlemen; the rest, I fear, must pass for vagabonds. * * * * * (Page 95.)

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[641] * * * *Admiral Cochrane undoubtedly intended to give him all the chance that a sufficient naval force could supply. In proof of this, several armed vessels, including one seventy-four, were sent to support the squadron first put under his orders and supposed to be at Cow, with directions to land a number of men, as they might

be found necessary and useful; but finding that we had departed in an unaccountable manner, they have naturally concluded that he is unequal to his enterprise and is not worth supporting. It is not surprising that their orders should not extend to conducting him from one part to another of the Caribbean Sea, or to assist in a second attempt on the main when he had made such a *faux pas* in the first. Undoubtedly they are ready to seize the pretext which they now have for dissolving a connection attended with expense to the government and mortification to its patrons; satisfied that they do more than justice to his claims in conveying him to a place of safety. * * * (Page 175.)

TRINIDAD, *November* 26, 1806.

* * * * Our reception and treatment in this island are naturally very different from what we experienced when we were here before. At that time, notwithstanding the influence of a numerous French and Spanish party, opposed to our scheme, of course, [642] the governor espoused it; knowing *that it had received encouragement from higher authorities than himself. The government house was given to Miranda for his residence, and took the name of headquarters. The governor and officers, civil and military, paid him the respect which corresponded to the rank he claimed. He received many visits, and his design many good wishes and benedictions from merchants and others, though after some time, as we delayed long there were signs of distrust; and the popularity of our project was not sufficient to procure any considerable quantity of supplies or number of men without money. The means which were presented to Miranda, by the offer of merchants already mentioned, he thought proper to reject. * * * * * * * (Page 217.)

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[643] *For correspondence relative to the prevention in the ports of the United States of vessels alleged to be fitting out to cruise against the commerce of France in 1864, see vol. 7, Claims of United States against Great Britain, pages 39–42.

CASE OF THE METEOR AND ORIENTAL.

Mr. Dickinson, district attorney, to Mr. Hunter, Acting Secretary of State.

[Telegram.]

OFFICE UNITED STATES MILITARY TELEGRAPH,
WAR DEPARTMENT,
New York, January 24, 1866.

SIR: Upon information and evidence furnished by the Spanish consul that the ship Meteor is being fitted out, and is about to sail from this port with intent that she should be employed or cruise in the service of Chili against the commerce of Spain, I have caused her to be libeled and detained. Has the Department of State any suggestions or instructions?

D. S. DICKINSON,
United States District Attorney.

WM. HUNTER, Esq.,
Acting Secretary of State.

[644] **Mr. Hunter, Acting Secretary of State, to Mr. Dickinson, district attorney.*

[Telegram.]

WASHINGTON, *January* 25, 1866.

D. S. DICKINSON,
United States Attorney, New York:

Your telegram of yesterday reached here too late in the evening to be then answered. At present no suggestions or instructions from this Department relative to the case of the Meteor are deemed necessary.

W. HUNTER.

Mr. Dickinson, district attorney, to Mr. Seward, Secretary of State.

OFFICE OF THE DISTRICT ATTORNEY OF THE U. S.
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, February 17, 1866.

SIR: I have the honor to report in the case of Benjamin F. Mackenna, indicted for a breach of the neutrality laws, &c., that on the 14th instant he appeared in court, and, in the language of his counsel, "waived his diplomatic privilege," and pleaded to the indictment upon the merits. In other words, he withdrew his plea of alleged diplomatic relations, which relations I was prepared to show by documents, so promptly and courteously furnished me from the State Department, had no existence.

[645] Esteban Rogers, the Chilian consul, indicted *for a similar offense, pleaded to the indictment without any suggestion of privilege, although at the time he evidently had not been advised that his exequatur had been revoked by the President. Both cases stand over for trial in March next, and the defendants have given bail for their appearance.

I have the honor to be, sir, yours, &c.,

D. S. DICKINSON,
United States District Attorney.

HON. WM. H. SEWARD,
Secretary of State.

Mr. Seward, Secretary of State, to Mr. Dickinson, district attorney.

DEPARTMENT OF STATE,
Washington, March 31, 1866.

SIR: Pursuant to the request contained in your letter of yesterday's date, I herewith transmit a certified copy of an official paper on file in this Department, relative to the existence of a state of war between Spain and Chili.

I am, sir, yours, &c.,

WILLIAM H. SEWARD.

D. S. DICKINSON, Esq.,
United States District Attorney, New York.

Mr. Seward, Secretary of State, to Mr. McCulloch, Secretary of Treasury.

DEPARTMENT OF STATE,
Washington, April 10, 1866.

SIR: At the instance of Mr. Tassara, the Spanish minister, I [646] will thank you to cause a vessel *called La Orientale, which is at pier No. 33, North River, New York, which is advertised for Montevideo, and which is supposed to be intended for the Chilian service, to be detained for examination. It is advisable that the order for this purpose should be sent by telegraph, as the vessel is to sail to-morrow or the day after.

I have the honor to be, sir, yours, &c.,

WILLIAM H. SEWARD.

Hon. H. MCCULLOCH,
Secretary of the Treasury.

Mr. McCulloch, Secretary of Treasury, to Mr. Seward, Secretary of State.

TREASURY DEPARTMENT,
Washington, April 11, 1866.

SIR: I have the honor to acknowledge the receipt of your communication of the 10th instant, requesting that the vessel called the La Orientale, advertised for Montevideo, be detained at New York for examination.

In accordance with such request, the following telegram was forthwith transmitted to the collector at New York:

> Detain vessel called La Orientale, which is at pier No. 33, North River, and advertised for Montevideo, and await instructions from this Department.

I will thank you to inform me at the earliest practicable moment what further action, if any, is required from this Department in the matter.

[647] *I am, yours, &c.,

HUGH McCULLOCH,
Secretary of the Treasury.

Hon. WM. H. SEWARD,
Secretary of State.

Mr. Seward, Secretary of State, to Mr. Dickinson, district attorney.

DEPARTMENT OF STATE,
Washington, April 11, 1866.

SIR: I inclose a translation of a note of yesterday, addressed to this Department by Mr. Tassara, the Spanish minister here, on the subject of a vessel at New York called La Orientale, which, supposing her to be intended for the service of the republic of Chili, he requests may be detained for examination. The request has been made known to the Secretary of the Treasury, who is understood to have complied with it. You will cause the proper examination to be made, and if it should result in sufficient cause therefor, the vessel and any parties concerned may be judicially proceeded against.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

DANIEL S. DICKINSON, Esq.,
Attorney of the United States
for the Southern District of New York.

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[648] **Mr. Seward, Secretary of State, to Mr. Tassara, Spanish minister*

DEPARTMENT OF STATE,
Washington, April 11, 1866.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of Mr. Tassara's note of yesterday's date, relative to the vessel called La Orientale, and alleged to be of a suspicious character, now lying at the port of New York, and advertised to sail for Montevideo, but really, according to Mr. Tassara's belief, for service in the cause of the Chilian government.

In reply the undersigned has the honor to inform Mr. Tassara that his request for the detention of the vessel referred to until her real destination can be made clear has been complied with.

The undersigned offers to Mr. Tassara on this occasion renewed assurances of his very high consideration.

WILLIAM H. SEWARD.

Señor Don GABRIEL GARCIA Y TASSARA,
&c., &c., &c.

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Neutrality laws of Denmark.
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[650, 651] *THE MERCHANT SHIPPING ACT, 1854.

[Extracts.]

ANNO DECIMO SEPTIMO ET DECIMO OCTAVO VICTORIÆ REGINÆ.

CHAP. CIV.—AN ACT to amend and consolidate the acts relating to merchant-shipping.—[10 August, 1854.]

* * * * * * *

1. This act may be cited for all purposes as "The Merchant Shipping Act, 1854."

2. In the construction and for the purposes of this act (if not inconsistent with the context or subject-matter) the following terms shall have the respective meanings hereinafter assigned to them; that is to say: * * * * *

"The treasury" shall mean the commissioners of Her Majesty's treasury.

"The admiralty" shall mean the lord high admiral or the commissioners for executing his office.

"The board of trade" shall mean the lords of the committee of privy council appointed for the consideration of matters relating to trade and foreign plantations.

* * * * * * *

[652] 6. The board of trade shall be the department *to undertake the general superintendence of matters relating to merchant-ships and seamen, and shall be authorized to carry into execution the provisions of this act, and of all other acts relating to merchant-ships and seamen in force for the time being, other than such acts as relate to the revenue. * * * * *

12. All consular officers, and all officers of customs abroad, and all local marine boards and shipping-masters shall make and send to the board of trade such returns or reports on any matter relating to British merchant shipping or seamen as such board requires; and all shipping-masters shall, whenever required by the board of trade, produce to such board or to its officers all official log-books and other documents which, in pursuance of this act, are delivered to them.

13. Every officer of the board of trade, and every commissioned officer of any of Her Majesty's ships on full pay, and every British consular officer, and the registrar-general of seamen and his assistant, and every chief officer of customs in any place in Her Majesty's dominions, and every shipping-master may, in cases where he has reason to suspect that the provisions of this act or the laws for the time being relating to merchant seamen and to navigation are not complied with, exercise the following powers, that is to say:

[653] *He may require the owner, master, or any of the crew of any British ship to produce any official log-books or other documents relating to such crew or any member thereof in their respective possession or control.

He may require any such master to produce a list of all persons on board his ship, and take copies of such official log-books, or documents, or of any part thereof.

He may muster the crew of any such ship.

He may summon the master to appear and give any explanation concerning such ship or her crew, or the said official log-books or documents. And if, upon requisition duly made by any person so authorized in that behalf as aforesaid, any person refuses or neglects to produce any such official log-book or document as he is hereinbefore required to produce, or to allow the same to be inspected or copied as aforesaid, or impedes any such muster of a crew as aforesaid, or refuses or neglects to give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives any person hereinbefore authorized to demand any such explanation, he shall for each such offense incur a penalty not exceeding twenty pounds.

14. The board of trade may, from time to time, whenever it seems expedient to them so to do, appoint any person as an inspector, to
[654] report to *them upon the following matters; that is to say:

(1.) Upon the nature and causes of any accident or damage, which any ship has sustained or caused, or is alleged to have sustained or caused.

(2.) Whether the provisions of this act, or any regulations made under or by virtue of this act, have been complied with.

(3.) Whether the hull and machinery of any steamship are sufficient and in good condition.

15. Every such inspector as aforesaid shall have the following powers; that is to say:

(1.) He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof to which the provisions of this act apply, not unnecessarily detaining or delaying her from proceeding on any voyage.

(2.) He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make.

(3.) He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make.

[655] (4.) He may require and enforce the production of *all books, papers or documents which he considers important for such purpose.

(5.) He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before any court of record, or if in Scotland, to any witness attending on citation the court of justiciary; and in case of any dispute as to the amount of such expenses the same shall be referred by the inspector to one of the masters of Her Majesty's Court of Queen's Bench in England or Ireland, or to the Queen's and lord treasurer's remembrancer in Scotland, who, on a request made to him for that purpose under the hand of the said inspector, shall ascertain and certify the proper amount of such expenses; and every person who refuses to attend as a witness before any such inspector, after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses, if any, to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any
[656] return, or to produce any document in his possession, or *to make or subscribe any declarations which any such inspector is hereby empowered to require, shall for each such offense incur a penalty not exceeding ten pounds.

16. Every person who willfully impedes any such inspector appointed by the board of trade, as aforesaid, in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding ten pounds, and may be seized and detained by such inspector or other person or by any person or persons whom he may call to his assistance, until such offender can be conveniently taken before some justice of the peace or other officer having proper jurisdiction. * *

DESCRIPTION AND OWNERSHIP OF BRITISH SHIPS.

18. No ship shall be deemed to be a British ship unless she belongs wholly to owners of the following description; that is to say:

(1.) Natural-born British subjects:

Provided that no natural-born subject, who has taken the oath of allegiance to any foreign sovereign or state, shall be entitled to be such owner as aforesaid, unles he has, subsequently to taking such last-mentioned oath, taken the oath of allegiance to Her Majesty, and is and continues to be during the whole period of his so being an owner [657] resident in some place within Her Majesty's dominions; *or if not so resident, member of a British factory or partner in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominion.

(2.) Persons made denizens by letters of denization or naturalized by or pursuant to any act of the imperial legislature, or by or pursuant to any act or ordinance of the proper legislative authority in any British possession:

Provided, that such persons are and continue to be during the whole period of their so being owners resident in some place within Her Majesty's dominions; or if not so resident, members of a British factory or partners in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominions, and have taken the oath of allegiance to Her Majesty subsequently to the period of their being so made denizens or naturalized.

(3.) Bodies corporate established under, subject to the laws of, and having their principal place of business in the United Kingdom or some British possession.

19. Every British ship must be registered in manner hereinafter mentioned, except—

[658] (1.) Ships duly registered before this act comes *into operation.

(2.) Ships not exceeding fifteen tons burden employed soley in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of such ships are resident.

(3.) Ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of St. Lawrence, or on such portions of the coasts of Canada, Nova Scotia, or New Brunswick as lie bordering on such gulf.

And no ship hereby required to be registered shall, unless registered, be recognized as a British ship; and no officer of customs shall grant a clearance or transire to any ship hereby required to be registered for the purpose, of enabling her to proceed to sea as a British ship, unless the master of such ship, upon being required so to do, produces to him such certificate of registry as is hereinafter mentioned; and if such ship attempts to proceed to sea as a British ship without a clearance or transire, such officer may detain such ship until such certificate is produced to him.

* * * * *

29. The commissioners of customs may, with the sanction of [659] the treasury, appoint such persons to *superintend the survey and admeasurement of ships as they think fit; and may, with the approval of the board of trade, make such regulations for that purpose as may be necessary; and also, with the like approval, make such modifications and alterations as from time to time become necessary in the tonnage rules hereby prescribed, in order to the more accurate and uniform application thereof, and the effectual carrying out of the principle of admeasurement therein adopted.

REGISTRY OF BRITISH SHIPS.

30. The following persons are required to register British ships, and shall be deemed registrars for the purposes of this act; that is to say:

(1.) At any port or other place in the United Kingdom or Isle of Man approved by the commissioners of customs for the registry of ships, the collector, comptroller, or other principal officer of customs for the time being.

(2.) In the islands of Guernsey and Jersey, the principal officers of Her Majesty's customs, together with the governor, lieutenant-governor, or other person administering the government of such islands respectively.

(3.) In Malta, Gibraltar, and Heligoland, the governor, lieutenant-governor, or other person administering the government of such places respectively.

(4.) At any port or place so approved as aforesaid within the [660] limits of the charter but not under the *government of the East India Company, and at which no custom-house is established, the collector of duties, together with the governor, lieutenant-governor, or other person administering the government.

(5.) At the ports of Calcutta, Madras, and Bombay, the master attendants, and at any other port or place so approved as aforesaid within the limits of the charter and under the government of the East India Company, the collector of duties, or any other person of six years standing in the civil service of the said company who is appointed by any of the governments of the said company to act for this purpose.

(6.) At every other port or place so approved as aforesaid, within Her Majesty's dominions abroad, the collector, comptroller, or other principal officer of customs, or of navigation laws; or if there is no such officer resident at such port or place, the governor, lieutenant-governor, or other person administering the government of the possession in which such port or place is situate.

31. The governor, lieutenant-governor, or other person administering the government, in any British possession where any ship is registered under the authority of this act shall, with regard to the performance of any act or thing relating to the *registry of a ship or of [661] any interest therein, be considered in all respects as occupying the place of the commissioners of customs; and any British consular officer shall, in any place where there is no justice of the peace, be authorized to take any declaration hereby required or permitted to be made in the presence of a justice of the peace. * * * *

35. Every application for the registry of a ship shall, in the case of individuals, be made by the person requiring to be registered as owner, or by some one or more of such persons, if more than one, or by his or their duly authorized agent, and in the case of bodies corporate, by their duly authorized agent; the authority of such agent, if appointed by individuals, to be testified by some writing under the hands of the appointers, and if appointed by a body corporate, by some instrument under the common seal of such body corporate.

36. Before registry, the ship shall be surveyed by a person duly appointed under this act, and such surveyor shall grant a certificate in the form marked A, in the schedule hereto, specifying her tonnage, build, and such other particulars descriptive of the identity of the ship as may from time to time be required by the board of trade; and such certificate shall be delivered to the registrar before registry.

[662] 37. The following rules shall be observed with *respect to entries in the register book; that is to say:

(1.) The property in a ship shall be divided into sixty-four shares.

(2.) Subject to the provisions with respect to joint owners or owners by transmission hereinafter contained, not more than thirty-two individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons, or of any company represented by or claiming under or through any registered owner or joint owner.

(3.) No person shall be entitled to be registered as owner of any fractional part of a share in a ship, but any number of persons, not exceeding five, may be registered as joint owners of a ship, or of a share or shares therein.

(4.) Joint owners shall be considered as constituting one person only as regards the foregoing rule relating to the number of persons entitled to be registered as owners, and shall not be entitled to dispose in severalty of any interest in any ship, or in any share or shares therein, in respect of which they are registered.

(5.) A body corporate may be registered as owner by its corporate name.

[663] 38. No person shall be entitled to be registered *as owner of a ship, or any share therein, until he has made and subscribed a declaration in the form marked B, in the schedule hereto, referring to the ship as described in the certificate of the surveyor, and containing the following particulars; that is to say:

(1.) A statement of his qualification to be an owner of a share in a British ship.

(2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign-built, and the time and place of building not known) a statement that she is foreign-built, and that he does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or (in the case of a ship condemned) a statement of the time, place, and court at and by which she was condemned.

(3.) A statement of the name of the master.

(4.) A statement of the number of shares in such ship of which he is entitled to be registered as owner.

(5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship, or any share therein.

[664] The above declaration of ownership shall be *made and subscribed in the presence of the registrar, if the declarant reside within five miles of the custom-house of the port of registry; but if beyond that distance, in the presence of any registrar or of any justice of the peace.

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40. Upon the first registry of a ship there shall, in addition to the declaration of ownership, be produced the following evidence; that is to say:

(1.) In the case of a British-built ship, a certificate (which the builder is hereby required to grant, under his hand) containing a true account of the proper denomination and of the tonnage of such ship as estimated by him, and of the time when and of the place where such ship was built, together with the name of the party (if any) on whose account he has built the same; and, if any sale or sales have taken place, the bill or bills of sale under which the ship, or share therein, has become vested in the party requiring to be registered as owner.

(2.) In the case of a foreign-built ship, the same evidence as in the case of a British-built ship, unless the person requiring to be registered as owner, or, in the case of a body corporate, the duly appointed officer, declares that the time or place of her building is unknown, or that [665] the builder's certificate cannot be procured, in which *case there shall be required only the bill or bills of sale under which the ship or share therein became vested in the party requiring to be registered as owner thereof.

(3.) In the case of a ship condemned by any competent court, an official copy of the condemnation of such ship.

41. If any builder willfully makes a false statement in any certificate hereby required to be granted by him, he shall, for every such offense, incur a penalty not exceeding one hundred pounds.

42. As soon as the foregoing requisites to the due registry of a ship have been complied with, the registrar shall enter in the register-book the following particulars relating to such ship; that is to say:

(1.) The name of the ship and of the port to which it belongs.

(2.) The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor.

(3.) The several particulars as to her origin stated in the declaration or declarations of ownership.

(4.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are interested in such ship. * * * *

[666] 44. Upon the completion of the registry of any *ship, the registrar shall grant a certificate of registry in the form marked D, in the schedule hereto, comprising the following particulars; that is to say:

(1.) The name of the ship and of the port to which she belongs.

(2.) The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor.

(3.) The name of her master.

(4.) The several particulars as to her origin stated in the declaration or declarations of ownership.

(5.) The name and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are respectively interested indorsed upon such certificate.

* * * * * * *

53. If any registered ship is either actually or constructively lost, taken by the enemy, burnt, or broken up, or if by reason of a transfer to any persons not qualified to be owners of British ships, or of any other matter or thing, any such ship as aforesaid ceases to be a British ship, every person who at the time of the occurrence of any of the aforesaid events owns such ship or any share therein shall, immediately upon obtaining knowledge of any such occurrence, if no notice thereof has already been given to the registrar at the port of registry of such [667] ship, *give such notice to him, and he shall make an entry thereof in his register-book; and, except in cases where the certificate of registry is lost or destroyed, the master of every ship so circumstanced as aforesaid shall immediately, if such event occurs in port, but if the same occurs elsewhere, then within ten days after his arrival in port, deliver the certificate of registry of such ship to the registrar; or, if there be no registrar, to the British consular officer at such port, and such registrar, if he is not himself the registrar of her port of registry, or such British consular officer, shall forthwith forward the certificate so delivered to him to the registrar of the port of registry of the ship; and every owner and master who, without reasonable cause, makes default

in obeying the provisions of this section, shall for each offense incur a penalty not exceeding one hundred pounds.

[668] *CERTIFICATES OF MORTGAGE AND SALE.

76. Any registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered at any place out of the country or possession in which the port of registry of such ship is situate, may apply to the registrar, who shall thereupon enable him to do so by granting such certificates as are hereinafter mentioned, to be called, respectively, certificates of mortgage or certificates of sale, according as they purport to give a power to mortgage or a power to sell.

77. Previously to any certificate of mortgage or sale being granted, the applicant shall state to the registrar, to be by him entered in the register-book, the following particulars; that is to say:

(1.) The names of the persons by whom the power mentioned in such certificate is to be exercised, and in the case of a mortgage the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale the minimum price at which a sale is to made, if it is intended to fix any such minimum.

(2.) The specific place or places where such power is to be exercised,
or if no place be specified, then that it may be exercised any-
[669] where, *subject to the provisions hereinafter contained.

(3.) The limit of time within which such power may be exercised.

78. No certificate of mortgage or sale shall be granted, so as to authorize any mortgage or sale to be made;

At any place within the United Kingdom, if the port of registry of the ship be situate in the United Kingdom; or at any place within the same *British* possession if the port of registry is situate within a *British* possession; or,

By any person not named in the certificate.

79. Certificates of mortgage and sale shall be in the forms marked respectively M and N, in the schedule hereto, and shall contain a statement of the several particulars hereinbefore directed to be entered in the register-book, and in addition thereto an enumeration of any registered mortgages, or certificate of mortgage, or sale affecting the ship or shares in respect of which such certificates are given.

81. The following rules shall be observed as to certificates of sale; that is to say:

(10.) If the ship is sold to a party not qualified to be the owner of a
British ship, the bill of sale by which the ship is transferred, the certi-
ficate of sale, and the certificate of registry shall be produced to
[670] some registrar or consular officer, *who shall retain the certificates
of sale and registry, and, having indorsed thereon the fact of such
ship having been sold to persons not qualified to be owners of *British* ships, shall forward such certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of such ship; and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register-book, and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein.

11. If, upon a sale being made to an unqualified person, default is made in the production of such certificates as are mentioned in the last rule, such unqualified person shall be considered by *British* law as hav-

ing acquired no title to or interest in the ship; and, further, the party upon whose application such certificate was granted, and the persons exercising the power, shall each incur a penalty not exceeding one hundred pounds.

94. Every registrar in the United Kingdom shall, at the expi- [671] ration of every month, and *every other registrar shall without delay, or at such stated times as may be fixed by the commissioners of customs, transmit to the custom-house in London a full return, in such form as they may direct, of all registries, transfers, transmissions, mortgages and other dealings with ships which have been registered by or communicated to them in their character of registrars, and the names of the persons who have been concerned in the same, and such other particulars as may be directed by the said commissioners.

NATIONAL CHARACTER.

102. No officer of customs shall grant a clearance or transire for any ship until the master of such ship has declared to such officer the name of the nation to which he claims that she belongs; and such officer shall thereupon inscribe such name on the clearance or transire. And if any ship attempts to proceed to sea without such clearance or transire, any such officer may detain her until such declaration is made.

103. The offenses hereinafter mentioned shall be punishable as follows, that is to say:

(1.) If any person uses the British flag and assumes the British national character on board any ship owned in whole or in part by any [672] persons *not entitled by law to own *British* ships, for the purpose of making such ship appear to be a British ship, such ship shall be forfeited to Her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy, or by a foreign ship of war in exercise of some belligerent right; and in any proceeding for enforcing any such forfeiture the burden of proving a title to use the *British* flag and assume the British national character shall lie upon the person using and assuming the same.

(2.) If the master or owner of any *British* ship does or permits to be done any matter or thing, or carries or permits to be carried any papers or documents with intent to conceal the *British* character of such ship from any person entitled by *British* law to inquire into the same, or to assume a foreign character, or with intent to deceive any such person as lastly hereinbefore mentioned, such ship shall be forfeited to Her Majesty; and the master, if he commits or is privy to the commission of the offense, shall be guilty of a misdemeanor.

(3.) If any unqualified person, except in the case of such transmitted interests as are hereinbefore mentioned, acquires as owner any interest, either legal or beneficial, in a ship using a *British* flag, and as- [673] suming the British character, such interest *shall be forfeited to Her Majesty.

(4.) If any person, on behalf of himself or any other person or body of persons, willfully makes a false declaration touching the qualification of himself or such other person or body of persons to own *British* ships or any shares therein, the declarant shall be guilty of a misdemeanor; and the ship or share in respect of which such declaration is made, if the same has not been forfeited under the foregoing provision, shall, to the extent of the interest therein of the person making the declaration, and unless it is shown he had no authority to make the same of the parties on behalf of whom such declaration is made, be forfeited to Her Majesty.

And in order that the above provisions as to forfeitures may be carried into effect, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any *British* officer of customs, or any *British* consular officer, to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and bring her for adjudication before the high court of admiralty in *England* or *Ireland* or any court having admiralty jurisdiction in Her Majesty's dominions; and such court may thereupon make such order in the case as it may think fit, and [674] may award to the offi*cer bringing in the same for adjudication such portion of the proceeds of the sale of any forfeited ship or share as it may think right.

104. No such officer as aforesaid shall be responsible, either civilly or criminally, to any person whomsoever, in respect of the seizure or detention of any ship that has been seized or detained by him in pursuance of the provisions herein contained, notwithstanding that such ship is not brought in for adjudication; or, if so brought in, is declared not to be liable to forfeiture, if it is shown to the satisfaction of the judge or court before whom any trial relating to such ship or such seizure or detention is held that there were reasonable grounds for such seizure or detention; but if no such grounds are shown, such judge or court may award payment of costs and damages to any party aggrieved, and make such other order in the premises as it thinks just.

[675]

*SHIPPING-OFFICES.

No. 122. In every sea-port in the United Kingdom in which there is a local marine board, such board shall establish a shipping-office or shipping-offices, and may, for that purpose, subject as herein mentioned, procure the requisite premises, and appoint, and from time to time remove and re-appoint, superintendents of such offices, to be called shipping-masters, with any necessary deputies, clerks, and servants, and regulate the mode of conducting business at such offices, and shall, subject as herein mentioned, have complete control over the same; and every act done by or before any deputy duly appointed shall have the same effect as if done by or before a shipping-master.

No. 123. The sanction of the board of trade shall be necessary, so far as regards the number of persons so appointed by any such local marine board, and the amount of their salaries and wages and all other expenses; and the board of trade shall have the immediate control of such shipping-offices, so far as regards the receipt and payment of money thereat; and all shipping-masters, deputies, clerks, and [676] servants, so appointed as aforesaid, *shall, before entering upon their duties, give such security (if any) for the due performance thereof as the board of trade requires; and if in any case the board of trade has reason to believe that any shipping-master, deputy, clerk, or servant appointed by any local marine board does not properly discharge his duties, the board of trade may cause the case to be investigated, and may, if it thinks fit so to do, remove him from his office, and may provide for the proper performance of his duties until another person is properly appointed in his place.

No. 124. It shall be the general business of shipping-masters, appointed as aforesaid—

To afford facilities for engaging seamen by keeping registries of their names and characters;

To superintend and facilitate their engagement and discharge in manner hereinafter mentioned;

To provide means for securing the presence on board at the proper times of men who are so engaged;

To facilitate the making of apprenticeships to the sea-service;

To perform such other duties relating to merchant seamen and merchant ships as are hereby, or may hereafter, under the powers herein contained, be committed to them.

[677] *No. 149. The master of every ship, except ships of less than eighty tons registered tonnage, exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the board of trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; that is to say:

(1.) The nature, and, as far as practicable, the duration of the intended voyage or engagement.

(2.) The number and description of the crew, specifying how many are engaged as sailors.

(3.) The time at which each seaman is to be on board or to begin work.

(4.) The capacity in which each seaman is to serve.

(5.) The amount of wages which each seaman is to receive.

[678] *(6.) A scale of the provisions which are to be furnished to each seaman.

(7.) Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the board of trade as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seamen in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law: *Provided*, That if the master of any ship belonging to any British possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the board of trade.

[679] *No. 150. In the case of all foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements; that is to say:

(1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping-master.

(2.) Such shipping-master shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature.

(3.) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping-master and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master.

[680] *(4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea, by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some shipping-master duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterward as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

168. All stipulations for the allotment of any part of the wages of a seaman during his absence, which are made at the commencement of the voyage, shall be inserted in the agreement, and shall state the amounts and times of the payments to be made; and all allotment notes shall be in forms sanctioned by the board of trade.

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[681] *THE CUSTOMS CONSOLIDATION ACT, 1853.

ANNO DECIMO SEXTO ET DECIMO SEPTIMO VICTORIÆ REGINÆ.

CAP. CVII.—AN ACT to amend and consolidate the laws relating to the customs of the United Kingdom and the Isle of Man, and certain laws relating to trade and navigation and the British possessions.—[August 20, 1853.]

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XIII. The commissioners of customs may, from time to time, by order under their hands, appoint stations or places for ships arriving at or departing from any port or place to bring to for the boarding or landing of officers of the customs, and may also appoint places to be sufferance-wharves for the lading and unlading of goods by sufferance, in such cases, under such restrictions, and in such manner as they shall [682] see fit, and may *also direct at what particular part or parts of any harbor, dock, quay, or other place in any port, ships laden with tobacco or any particular cargo shall moor and discharge such cargo; and the commissioners of customs, or the collector or comptroller of any port under their directions, may station officers on board any ship while within the limits of any port in the United Kingdom.

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LII. The captain, master, purser, or other person having the charge of any ship (having commission from Her Majesty, or from any foreign state) having on board any goods laden in parts beyond the seas, shall, on arrival at any port in the United Kingdom, and before any part of such goods be taken out of such ship, or when called upon so to do by any officer of the customs, deliver an account in writing, under his hand, to the best of his knowledge, of the quality and quantity of every package or parcel of such goods, and of the marks and numbers thereon, and of the names of the respective shippers and consignees of the same, and shall make and subscribe a declaration at the foot of such account, declaring to the truth thereof, and shall also truly answer to the collector or comptroller such questions concerning such goods as shall be required of him, and on failure thereof of such captain, master, [683] purser, or other person, shall forfeit the sum of one hun*dred pounds; and all such ships shall be liable to such searches as merchant-ships are liable to, and the officers of the customs may freely enter and go on board all such ships, and bring from thence on shore into the Queen's warehouse any goods found on board any such ship as aforesaid, subject, nevertheless, to such regulations in respect of ships of war belonging to Her Majesty as shall, from time to time, be directed in that respect by the commissioners of Her Majesty's treasury.

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As to the exportation and entry of goods, and the clearance of ships from the United Kingdom to parts beyond the seas:

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CXVIII. The master of every ship in which any goods are to be exported from the United Kingdom to parts beyond the seas, or his agent, shall, before any goods be taken on board, deliver to the collector or comptroller a certificate from the proper officer of the due clearance inward or coastwise of such ship of her last voyage, and shall also deliver therewith an entry outward of such ship, verified by his signature, in the following form, or to the same effect, and containing [684] the several particulars *indicated, or required thereby: * * * And if such ship shall have commenced her lading at some other port, the master shall deliver to the searcher the clearance of such goods from such other port; and if any goods be taken on board any ship at any port before she shall have entered outwards at such port, (unless a stiffening order, when necessary, shall be issued by the proper officer to lade any heavy goods for exportation on board such ship,) the master shall forfeit the sum of one hundred pounds.

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CXXVI. The shipping bill or bills, when filled up and signed by the exporter or his agent, or the consignee of the ship, as the case may be, in such manner as the proper officer may require, and countersigned by the searcher, shall be the clearance for all the goods enumerated therein; and if any of such goods shall consist of tea, spirits or tobacco, the exporter or his agent shall furnish to the searcher an account thereof, containing the number and description of the packages, and the respective quantities contained therein, which, when certified by the searcher, shall accompany the ship, and have the same force and effect as the cocket in use prior to the passing of this act; and if the exporter or his agent shall require a similar certificate in respect of any other goods shipped for exportation, the searcher shall, on its being pre- [685] *sented to him for that purpose, certify the same in like manner: *Provided always*, That if any such certificate be required to be in any particular form for goods destined for the Zollverein or any other foreign state, or under the name of "cocket," such certificate may be so prepared and denominated.

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As to the shipping of stores for the use of foreign-bound vessels:

CXL. The master of every ship of the burden of fifty tons or upwards, departing from any port in the United Kingdom upon a voyage to parts beyond the seas, the duration of which out and home shall not be less than forty days, shall, upon due application made by him, and upon such terms and conditions as the commissioners of customs may direct, receive from the searcher an order for the shipment of such stores as may be required and allowed by the collector or comptroller for the use of such ship, with reference to the number of the crew and passengers on board and the probable duration of the voyage on which she is about to depart; and all demands for such stores shall be made in such

form and manner as such collector or comptroller shall require, and shall be signed by the master or owner of the vessel; and after
[686] such stores are *duly shipped the master or his agent shall make out an account of the stores so shipped, together with any other stores then already on board, and the same, when presented to the searcher, signed by him, and countersigned by the collector or comptroller, shall be the victualing bill; and no stores shall be shipped for the use of any ship, nor any articles taken on board any ship be deemed to be stores, except such as shall be borne upon such victualing bill.

As to the clearance of ships outwards:

CXLI. If there be on board any ship any goods, being part of the inward cargo reported for exportation in the same ship, the master shall, before clearance outwards of such ship from any port in the United Kingdom, deliver to the searcher a copy of the report inwards of such goods, certified by the collector or comptroller; and if such copy be found to correspond with the goods so remaining on board, the searcher shall sign the same, to be filed with the certificates or cockets, if any, and victualing bill of the ship.

CXLII. Before any ship shall be cleared outwards from the United Kingdom with any goods shipped or intended to be shipped on
[687] board the same, the master shall deliver a content of such *ship to the searcher, in the form or to the effect following, and containing the several particulars therein required, as far as the same can be known by him, and shall make and subscribe the declaration at the foot thereof, in the presence of the collector or comptroller, and shall answer such questions as shall be demanded of him concerning the ship, the cargo, and the intended voyage, by such collector or comptroller.

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And before clearance, the certificates, if any, shall be delivered to the searcher, who shall compare the shipping bills with the contents and certificates, if any, and file such certificates, copy of report inwards, if any, of goods reported for exportation in such ship, and the victualing bill, with a label attached and sealed thereto, in the form or to the effect following:

[SEAL.]
Number of certificates, (*numbers in figures.*)
Ship, (*name of ship.*)
Master, (*name of master.*)
Date of clearance.
(Signature.) ——— ———,
Searcher.
(Signature.) ——— ———,
Collector or Comptroller.

And such label, when filled up, and signed by the searcher
[688] and the collector or comptroller, shall, *as to the goods comprised therein, be the clearance and authority for the departure of the ship; and the shipper of any British goods and such goods as were previously chargeable with duty at value laden in such ship shall, under a penalty of twenty pounds, deliver to the broker, agent, or other person clearing such ship, a duplicate of the bill of lading thereof at the time of signing thereof, with an indorsement thereon of the quantity and value of such goods, and such broker, agent, or other person as aforesaid, shall, within fourteen days after such final clearance of the ship, sign and deliver to the collector or comptroller of customs a full and accurate list of all such goods, with the quantities and value thereof, from the bills of lading so delivered to him, with such bill or bills of lading annexed thereto, and on failure thereof, such broker, agent, or other

person as aforesaid, shall forfeit the sum of twenty pounds, and for this purpose the duplicate bill of lading so required shall not be liable to any stamp duty.

CXLIII. If any goods liable to duty on importation, or taken from the warehouse to be exported or entitled to drawback on exportation, which are enumerated in the contents of any ship, shall not be [689] duly shipped before the departure of such *ship, or shall not be duly certified by the proper officer as short-shipped, such goods shall be forfeited; or if any such goods shall be taken on board such ship, not being enumerated in such content, the master of such ship shall forfeit the sum of five pounds in respect of every package of such goods; and if any goods duly shipped on board such ship shall be landed at any other place than that for which they shall have been cleared, unless otherwise accounted for to the satisfaction of the commissioners of customs, the master of such ship shall forfeit a sum equal to treble the value of the goods so landed.

CXLIV. If any goods shall be shipped, put off, or water-borne to be shipped, without being duly cleared, or otherwise contrary to the provisions of this act, the same shall be liable to forfeiture.

CXLV. Before any ship shall depart in ballast from the United Kingdom for parts beyond the seas, not having any goods on board except stores from the warehouse borne upon the victualing bill of such ship, nor any goods reported inwards for exportation in such ship, the collector or comptroller shall clear such ship in ballast by notifying such clearance and the date thereof on the victualing bill, and deliver the same to the master of such ship as the clearance thereof, and the master of such ship shall answer to the collector or comptroller such questions touch- [690] ing *her departure and destination as shall be demanded of him; and ships having only passengers with their baggage on board, and ships laden only with chalk or slate, shall be deemed to be in ballast; and if any such ship, whether laden or in ballast, shall depart without being so cleared, if she have any such stores on board, the master shall forfeit and pay the sum of one hundred pounds.

As to the boarding of ships after clearance outwards:

CXLVI. Any officers of customs may go on board any ship after clearance outward within the limits of any port in the United Kingdom, or within four leagues of the coast thereof, and may demand the ship's clearance; and if there be any goods on board in respect of which certificates are required, not contained in such certificates, or any stores not indorsed on the victualing bill, such goods or stores shall be forfeited; and if any goods contained in such certificates be not on board, the master shall forfeit the sum of twenty pounds for every package or parcel of goods contained in such certificates, and not on board.

CXLVII. If any officer of customs shall place any lock, mark, or seal upon any goods taken from the warehouse without payment of [691] duty as stores on board any ship or vessel de*parting from any port in the United Kingdom, and such lock, mark, or seal be willfully opened, altered, or broken, or if any such stores be secretly conveyed away, either while such ship or vessel remains at her first port of departure, or at any other port or place in the United Kingdom, or on her passage from one such port or place to another, before the final departure of such ship or vessel on her foreign voyage, the master shall forfeit the sum of twenty pounds.

CXLVIII. If any ship departing from any port in the United Kingdom shall not bring to at such stations as shall be appointed by the commissioners of customs for the landing of officers from such ships, or for further examination previous to such departure, the master of such ship shall forfeit the sum of twenty pounds.

* * * * * * *

CLXV. The master of every ship bound from any British possessions abroad, except the territories subject to the government of the presidencies of Bengal, Madras, and Bombay, shall deliver to the proper officer of customs an entry outward under his hand of such ship, and also subscribe and deliver to such officer a content of the cargo of such ship, if any, or state that she is in ballast, as the case may be, and answer such questions concerning the ship, cargo, if any, and voyage, as [692] shall be demand*ed of him in the same manner, as nearly as may be, as is prescribed to be observed on the entry and departure of any ship from the United Kingdom, and thereupon the proper officer shall give to the master a certificate of the clearance of such ship for her intended voyage; and if the ship shall depart without such clearance, or if the master shall deliver a false content, or shall not truly answer the questions demanded of him, he shall forfeit the sum of fifty pounds.

[693.] *THE SUPPLEMENTAL CUSTOMS CONSOLIDATION ACT, 1855.

[Extracts.]

ANNO DECIMO OCTAVO ET DECIMO NONO VICTORIÆ REGINÆ.

CAP. XCVI.—AN ACT to consolidate certain acts, and otherwise amend the laws of the customs, and an act to regulate the office of the receipt of Her Majesty's exchequer at Westminster.—[14th August, 1855.]

IX. No goods shall be shipped, put off, or water-borne, to be shipped for exportation from any port or place in the United Kingdom, except on days not being Sundays or holidays, nor from any place except some legal quay, wharf, or other place duly appointed for such purpose, nor without the presence or authority of the proper officer of customs, nor before due entry outwards of such ship and due entry of such goods, nor before such goods shall have been duly cleared for shipment; and any goods shipped, put off, or water-borne, to be shipped contrary [694] thereto, shall be forfeited; and it shall be lawful *for the searcher to open or cause to be opened, and to examine all goods shipped or brought for shipment at any place in the United Kingdom, and the opening for that purpose of packages containing goods upon which any drawback of customs or inland revenue is claimed, and the weighing, repacking, landing, (when water-borne,) and the shipping thereof, shall be done by or at the expense of the exporter.

X. Any exporter of goods who shall fail, either by himself or his agent, to deliver to the searcher a shipping bill, with duplicates thereof, of the goods exported by him, as prescribed by the one hundred and twenty-fifth section of "the customs consolidation act, 1853," shall forfeit the sum of twenty pounds.

XI. If any ship having cargo on board shall depart from any port without being duly cleared, the master shall forfeit the sum of one hundred pounds.

* * * * * *

XVI. The powers and authorities now vested in the commissioners of customs with regard to any act or thing relating to the customs or to trade or navigation in any of the British possessions abroad shall, from and after the passing of this act, be vested in the governor, [695] lieutenant-governor, or other person *administering the government in any such possession, and every act required by any law to be done by or with any particular officer or at any particular place, if done by or with any such officer or at any place appointed or nominated by such governor, lieutenant-governor, or other person so administering such government, shall be deemed to have been done by or with such particular officer or at such particular place, as the case may be, and as required by law; and all commissions, deputations, and appointments granted to any officers of customs, in force at the commencement of this act, shall have the same force and effect, to all intents and purposes, as if the same had been granted or made in the first instance by such governor, lieutenant-governor, or person so administering the government of any such possession; and all bonds or other securities which shall have been given by or for any such officers and their respective securities, for good conduct or otherwise, shall remain in force, and shall and may be enforced and put in suit at the instance of or by directions of any such governor, lieutenant-governor, or person administering the government of any such possession. * * *

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[697] *ADDITIONAL EVIDENCE FROM MELBOURNE AND CAPE TOWN, SUBMITTED TO THE ARBITRATORS ON THE 15TH OF DECEMBER, 1871, BUT NOT INCLUDED IN THE EVIDENCE THEN PRINTED.

[698] **Mr. Adamson, consul, to Mr. Davis, Assistant Secretary of State.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, September 25, 1871.

SIR: I have the honor to acknowledge the receipt, on the 13th instant, of dispatch No. 14, dated June 29, 1871, from the Hon. William Hunter, Acting Secretary of State, and of the inclosures and documents therein referred to.

I am instructed to procure such further evidence as it may be possible to obtain in regard to various facts in connection with the visit, at this port, of the armed steamship Sea King, otherwise known as the confederate steamship Shenandoah, in order more fully to establish the claims of the United States before the tribunal which is to sit at Geneva.

In explanation of the want of fullness in the documents about to be presented to you herewith, I may be permitted to say, that the time between the receipt of the honorable Acting Secretary's dispatch and the departure of mail, now about to close, was too short for the neces- [699] sary investigations in a matter of such impor*tance; that, having but recently arrived here, I was compelled to depend mainly on the assistance of Mr. S. P. Lord, a loyal citizen of the United States, long a resident of this port, to whose zealous co-operation I am indebted for the evidence herewith. Also, that beside the many deaths which have occurred, a large number of those who could give valuable evidence have long since left this port, and that most of those still here decline giving the desired information, either because it might be prejudicial to their private business, or to the interests of Great Britain, the country to which they owe allegiance. I may also state that without a commission from the courts of Great Britain, directing the taking of depositions, it seems difficult to take declarations here that would be evidence in the courts of England.

With the above explanations I now submit the inclosed deposition of George Washington Robbins, of Sandridge, near Melbourne, (inclosure No. 1,) declaring that he saw the Shenandoah at this port in 1865, and identifying that vessel as the Sea King by the name on the stern as well as by the statements made to him by two of her officers, his acquaintances.

[700] Mr. Robbins also saw the Shenandoah *on the government slip at Williamstown; saw working-men going to and from her, and positively declares that additions were made to her crew, naming two of the men. You will particularly notice that he reported the shipping of the men to the water-police, who said they were powerless to interfere without directions from the head authorities at Melbourne, thus confirming the statement of Mr. Consul Blanchard in his dispatch No. 4, of February 23, 1865. Also, as showing the partnership of the government of this colony, the sworn statement of Samuel P. Lord, esq., of this city, (inclosure No. 2,) repeating under oath the statement contained in his letter to Mr. Consul Blanchard, which appears as inclosure No. 49, with Mr. Blanchard's dispatch of February 23, 1865, giving strong evidence of the unwillingness of the Crown solicitor and other officials to receive information which might make it the duty of the government to seize the Shenandoah, and generally the unfriendly feeling of the government of this colony as towards the United States.

You will also please notice that Mr. Lord identifies as an official [701] book or document the printed book entitled "The Victorian *Hansard," which was produced at the taking of his deposition, and which will be forwarded herewith under separate cover, marked 3 A.

I also inclose the sworn statement of Samuel P. Lord, esq., (inclosure No. 4,) showing the fact that said vessel was coaled and repaired at this port, which more fully explains why the declarations of the persons who actually furnished the coals and made the repairs cannot be given herewith. Also the sworn statement of H. B. Donaldson, declaring to the facts of the arrival of the Shenandoah at this port, the stay here of said ship, the repairs made at the government slip, and particularly to the fact that he furnished the materials for such repairs, (inclosure No. 5.)

In regard to the confidential instructions alluded to on page 517, Diplomatic Correspondence, it would seem that they have not been made public.

It may be important to our case to notice particularly the debates in the legislative councils of this colony during the stay of the Shenandoah, as reported in the Victorian Hansard herewith, (see pages [702] 264, 284, 309, and 364.) On page 264 it will be seen *that the Hon. Mr. Berry (now the treasurer of this colony) called the attention of the government to the case of the Shenandoah. He identified her as the vessel called the Sea King, which sailed from London about the 8th of October, 1864, asserting that there was abundant evidence of the fact, and inquired why the confiscation of the vessel was not carried out under the neutrality proclamation. He pointed out to the honorable chief secretary that the vessels destroyed by such a vessel would at some future time be claimed by the American Government from the British government, but unfortunately his prophetic utterances were not heeded.

The partnership of this government may well be inferred from the reply of the chief secretary, Mr. McCulloch, (now Sir James McCulloch,) which follows Mr. Berry's remarks. The same partnership is also clearly shown in the "*cheers from all parts of the house*" which followed the subsequent remarks of Mr. O'Shannessy. It is also shown in the extremely tardy action of the government in regard to complaints made that the [703] Shenandoah *was increasing her crew in this port. The honorable chief secretary, Mr. McCulloch, in his explanations made in the house, February 15, 1865, (see Hansard, page 364,) says, "The government found they could not shirk the question." It was apparently their desire to do so, and his history of the case seems to show that eventually they did shirk it.

I much regret the impossibility of obtaining direct testimony on many important points. The second deposition of Samuel P. Lord, esq., states clearly the fact that Mr. H. W. Langlands, who is substantially the Langlands Foundery Company of this place, admitted to Mr. Lord that he made the repairs on the Shenandoah at this port, and that he paid one J. R. Collins the sum of three hundred pounds sterling for stevedore work on said vessel. Mr. Collins did at first agree to depose to his share in the transaction, but on second thought declined. (See his letter attached to inclosure No. 2.)

That the Shenandoah was repaired on what is known as the government slip is not denied by the then chief secretary, (see remarks of Mr. McCulloch, Victorian Hansard, page 364,) but I believe that [704] at that *time the government slip was leased to a private company.

For reasons hereinbefore stated, I cannot obtain sworn declaration as to the coaling, although the facts are a matter of general notoriety.

The recruiting of additional crew, at this port, may be considered as admitted by the chief secretary, (see Victorian Hansard, pages 364, 365,) and the fact that Captain Waddell knew that men were joining his ship here is indicated by his refusal to allow the inspector of police to go on board and execute the warrant for apprehension of the man "Charlie," and that Captain Waddell gave his word of honor as an officer and a gentleman that there was no such person on board, although later on it will be seen that four men were detected in leaving the ship at about 10 o'clock at night, and that one of them was the aforesaid man "Charlie.'

The fact that Captain Waddell had violated his word of honor, as an officer and a gentleman, was virtually acknowledged by the chief secretary, in suspending for a time permission for Her Majesty's sub- [705] jects to *give assistance to the Shenandoah, which suspension was however removed, for what appears to be rather insufficient reasons; (see Hansard, page 365,) also, by the fact, a matter of common repute, that the leading club, the "Melbourne Club," which had given a public dinner to the officers of the Shenandoah, did not invite them so freely and openly after this breach of "word of honor."

As further showing the partnership of the government officials, I may say that it is a matter of common report, which, however, cannot be established by direct evidence, that when a public reception was tendered the officers of the Shenandoah by citizens of Ballarat, distant 96 miles, the government of this colony, in the person of one of its members, furnished said officers with free passes over the railway.

Respectfully submitting the foregoing, I have the honor to be, sir, yours, &c.,

THOMAS ADAMSON, JR.,
United States Consul.

Hon. J. C. B. DAVIS,
Assistant Secretary of State, Washington.

P. S.—At the time of writing the above, the deposition of H. B. Donaldson, marked enclosure No. 5, was in the solicitor's hands, ready [706] for Mr. Donaldson to swear to and *subscribe. I have made every effort to have it completed, and now, at 1 p. m., my solicitor comes with the document unsigned, stating that Donaldson refuses to sign until he receives £50 for doing so. I will barely have time to mail this; in fact may have to send it to Sydney to be mailed.

THOMAS ADAMSON, JR.,
United States Consul.

Affidavit of G. W. Robbins.

To all to whom these presents shall come: I, Henry Penketh Fergie, notary public by royal authority, duly authorized, admitted, and sworn, residing and practicing in the city of Melbourne, in the colony of Victoria, do hereby certify that Winfield Attenborough, before whom the affidavit of George Washington Robbins, on the other side written, purports to have been sworn, is a commissioner of the supreme court of the said colony for taking affidavits duly appointed in that behalf; and that the name W. Attenborough subscribed thereto is of the proper handwriting of the said Winfield Attenborough; and that to all acts by him, the said Winfield Attenborough, done in his said capacity or office, [707] *full faith and credit are due, in judicature and thereout.

In faith and testimony whereof, I, the said notary, have hereunto subscribed my name and set and affixed my seal of office, at Melbourne, in the said colony of Victoria, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.]

HENRY PENKETH FERGIE,
Notary Public, Melbourne.

I, George Washington Robbins, of Sandridge, near Melbourne, in the colony of Victoria, stevedore, make oath and say as follows:

1. I have been in business in Sandridge (port of Melbourne) as a stevedore ever since June, one thousand eight hundred and fifty-three.

2. I saw the vessel Shenandoah in the port of Melbourne in one thousand eight hundred and sixty-five. The name Shenandoah I perceived had been painted over the name Sea King; the paint having worn off, the original name was plainly disclosed. The vessel was popularly known in this port as the confederate ship of war Shenandoah.

[708] *3. I knew the paymaster of the Shenandoah and one of the engineers; I first became acquainted with them in New Orleans, in the United States of America. They told me the Shenandoah was originally the Sea King. They asked me to take in the coals for the

ship, but I refused, on the ground, as I told them, that there was one American flag flying when I left the country, and I didn't recognize any other flag.

[709] *4. I saw the Shenandoah on the government slip at Williamstown, near Melbourne; I saw working-men going backwards and forwards whilst she was on the government slip.

5. I saw coals being put on board the ship when she was lying at anchor in the bay.

6. I know that several men, residents of this port, went on board the Shenandoah, in this port, as additions to her crew, and went away in her. Thomas Strong and Henry Riley were the names of two of the men who so went away. Thomas Strong left my employ for the purpose of so going away. Thomas Strong returned to Melbourne afterwards and applied to me for work, which I refused, on the ground that he had gone away in the Shenandoah against my desire.

7. I reported to the water police at Williamstown the shipping of the men, but they said they were powerless to interfere without directions from the head authorities in Melbourne.

8. It was well known in the port that the so-called Shenandoah was being coaled, repaired, and her crew strengthened here, and without objection on the part of the government.

G. W. ROBBINS.

Sworn at Melbourne, in the colony of Victoria, this twenty-first day of September, 1871.

[710] * Before me,

W. ATTENBOROUGH,

A Commissioner for taking affidavits in the Supreme Court of the Colony of Victoria.

Affidavit of S. P. Lord.

I, Samuel Perkins Lord, of Collins Street west, in the city of Melbourne, in the colony of Victoria, merchant, make oath and say as follows, that is to say:

1. In compliance with a request from Mr. William Blanchard, then consul in the said colony for the United States of America, made to me by him on the twentieth day of February, one thousand eight hundred and sixty-five, that I would give him in writing an account of my interview held in Mr. Blanchard's presence with Mr. Gurner, who then, as now, occupied the position of Crown solicitor in the said colony, I wrote and sent to Mr. Blanchard, on the said twentieth day of February, one thousand eight hundred and sixty-five, a letter of which the following is a copy:

MELBOURNE, *February* 20, 1865.

DEAR SIR: Yours of this date is received requesting me to give you an account of an interview held in my presence between you and Mr. Gurner, Crown solicitor [711] on Friday last. In reply, you must *allow me to state the whole occurrences of the afternoon in connection with the affair of shipping men for the Shenandoah, which were simply these: While in your office about 5 o'clock p. m., a man came in out of breath, asking to see the United States consul, saying he had run most of the way from Sandridge, to report to you that there were a large number of men of his acquaintances that were about going on board the bark Maria Ross, (then lying in the bay ready to sail,) with the intention of shipping on board the Shenandoah, which vessel also was about leaving port. You stated that as the information was important and urgent, you would at once take the man to the Crown solicitor's office, where you had previously been directed by the attorney-general to take similar information.

You at once took a conveyance, and drove to the Crown law offices. As we stopped at the gate we saw Mr. Gurner, with one of the employés of the office, coming down the yard from the door. He, on seeing us, turned partly around, and gave in an undertone some directions to this employé, which I did not hear; on our entering the gate, Mr. Gurner and his employé stopped half way down the yard, and on our attempting to pass them to go
into the building were accosted by the clerk, who said there was no one in, or some-
[712] *thing to that effect. When I said we should then have to trouble Mr. Gurner,
as the business was urgent, and introduced you as the United States consul to Mr. Gurner, the Crown solicitor, he, without noticing or acknowledging you, said very tartly that he was going to his dinner and could not be detained, when you replied, "I come as the representative of the United States, with evidence to lay before you, the Crown solicitor, of a large number of men about violating the neutrality laws of the country;" at which he replied, in a sneering and most insulting manner, "I don't care; I want my dinner, and I am going to have it; there are plenty of magistrates round town; go to them." When I, seeing that you felt bitterly the insulting manner of Mr. Gurner and wishing to spare you a continuation of it, said, "Let us then go and see the attorney-general." Mr. Gurner turned his back on us and walked off. When outside the gate and about a dozen paces down Collins street, he turned and hallooed out, "My dinner, my dinner, Lord, that is what I want." We left, and went first to the office of chief commissioner of police, and not finding either him or Mr. Lytleton in, we drove to the house of parliament, and on sending your name to the attorney-general, he at once came out and asked us into the side room. He patiently listened
[713] to all you had to say, *and then suggested that if you would place the matter in
the shape of an affidavit he would lay it before his colleagues; that a verbal statement was not sufficient for the government to proceed upon. We then left, and drove to the office of the detective police and saw Mr. Nicholson, the chief, who heard the man's statement in full, but, as he could not act without a warrant, advised us to go to the police and magistrate, Mr. Sturt, and get a warrant, then he would at once act upon it. Leaving there we went to the residence of Mr. Sturt in Spencer street, who received you very politely, listened to what you had to say, examined the man, but stated that he could not take the responsibility of granting a warrant on the evidence of this man alone, and advised your going to Williamstown to McCall, who would perhaps be in possession of corroborative testimony through the water police. We then left, and it being about half past seven, and you finding such a disinclination in any one to act in the matter, decided to take the deposition yourself and send it to the attorney-general, leaving it to the government to take such action on it as it might deem proper. Going to your consulate the deposition was taken, and a copy inclosed to the attorney-general with a request for me to deliver it. I took it to the house of
[714] parliament, which I found closed, and it being *then late, about nine, I decided
it was too late to stop the shipment of the men, as we understood the vessel was to leave at five, and I went home and returned you the letter to you on Saturday morning. Previous to going home, however, I again went to the detective office, saw Mr. Nicholson, and told him how you had been prevented from getting the evidence before the government in the shape they required it. He expressed his regret, but could not act in so important a matter without a warrant. I have thus given you, as near as I can recollect, the occurrences as they took place at the time you mention, and, as I believe, nearly word for word as they were uttered.

I remain, dear sir, yours, respectfully,

SAMUEL P. LORD.

WILLIAM BLANCHARD, Esq.,
United States Consul, Melbourne.

2. The whole of the facts narrated or referred to in my said letter to Mr. Blanchard as having taken place, did actually take place in my own presence, and in the order and manner and at the times there detailed, and the person or functionaries there named respectively then held the offices in my said letter mentioned as having been held by
them, and the whole of the statements contained in my said let-
[715] ter are true in every *particular.

3. The exhibit or volume now produced to me and marked A, and which purports to be the "The Victorian Hansard, containing the debates and proceedings of the legislative council and assembly of the colony of Victoria, Friday, December 23, 1864, to Thursday, March 2, 1865," and to have been published at Melbourne aforesaid by "Wilson and Mackinnon," was so published by Wilson and Mackinnon under the direction of the government of the said colony of Victoria, and was

the only publication of the debates and proceedings of the said legislative council and assembly authorized by the said government.

SAMUEL P. LORD.

Sworn at Melbourne, in the colony of Victoria, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-one, before me,

W. ATTENBOROUGH,
A Commissioner of the Supreme Court of the Colony of Victoria for taking Affidavits.

To all to whom these presents shall come: I, Henry Penketh Fergie, notary public by royal authority, duly authorized, admitted, and sworn, residing and practicing in the city of Melbourne, in the colony of Victoria, do hereby certify that Winfield Attenborough, before whom [716] the affidavit on the *other side written purports to have been sworn, is a commissioner of the supreme court of the said colony of Victoria for taking affidavits, duly appointed in that behalf, and that the name W. Attenborough thereto subscribed, and to the exhibit thereto annexed, is of the proper handwriting of the said Winfield Attenborough, and that to all acts by him, the said Winfield Attenborough, done in his said capacity or office, full faith and credit are due in judicature and thereout.

In faith and testimony whereof I, the said notary, have hereunto subscribed my name and set and affixed my seal of office, at Melbourne, in the said colony of Victoria, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] HENRY PENKETH FERGIE,
Notary Public, Melbourne.

Further affidavit of S. P. Lord.

To all to whom these presents shall come: I, Henry Penketh Fergie, notary public by royal authority, duly authorized, admitted, and sworn, residing and practicing in the city of Melbourne, in the colony of Victoria, do hereby certify that Winfield Attenborough, before whom [717] *the affidavit on the other side written purports to have been sworn, is a commissioner of the supreme court of the said colony of Victoria for taking affidavits, duly appointed in that behalf, and that the name W. Attenborough thereto subscribed, and to the exhibit thereto annexed, is of the proper handwriting of the said Winfield Attenborough, and that to all acts by him, the said Winfield Attenborough, done in his said capacity or office, full faith and credit are due in judicature and thereout.

In faith and testimony whereof I, the said notary, have hereunto subscribed my name and set and affixed my seal of office, at Melbourne, in the said colony of Victoria, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] HENRY PENKETH FERGIE,
Notary Public, Melbourne.

A.

SANDRIDGE, *September* 20, 1871.

DEAR SIR: Referring to the conversation I had with you in relation to the steamship Shenandoah, I must, on second consideration, decline

[718] (for private reasons) giving *you the information I promised you.

Trusting you will not consider this refusal any want of respect to or confidence in you,

I remain, your obedient servant,

JOHN K. COLLINS,
Stevedore.

SAMUEL P. LORD, Esq.,
Melbourne.

This is the exhibit, marked A, referred to in the affidavit of Samuel Perkins Lord, sworn before me this 25th day of September, 1871.

W. ATTENBOROUGH,
A Commissioner of the Supreme Court of the Colony of Victoria for taking Affidavits.

I, Samuel Perkins Lord, of Collins Street west, Melbourne, in the colony of Victoria, merchant, make oath and say as follows; that is to say:

1st. On the 21st day of September instant, I saw Mr. J. K. Collins, of Sandridge, near Melbourne, stevedore, who stated to me, and I believe it to be true, that he was the stevedore of the confederate ship Shenandoah while in the port of Melbourne, and that he took on board her coal when here, and he at the same interview offered to furnish me with a copy of his account against the ship, but on my afterward applying to him for such copy account, he refused to give it.

2d. On the 21st day of September instant, I saw Mr. Henry W. Langlands, who is the manager of the Langlands Foundery Company, [719] carrying on business *here as Langlands Foundery Company, who told me that their company did the repairs to the said vessel called the Shenandoah, when she was in this port; that he paid some of her bills; among the rest he paid the said J. K. Collins the sum of three hundred pounds for stevedore work on the Shenandoah. He stated to me, at first, that he was willing to furnish me with a copy of his account, and afterward on applying to him for it, he showed it to me, but refused to let me have it, unless upon my assurance that it would not be used against his, the British government. This I refused to give.

3d. I have this day received from the said J. K. Collins the letter marked A, hereunto annexed.

SAMUEL P. LORD.

Sworn at Melbourne, in the colony of Victoria, this 25th day of September, 1871.

Before me,

W. ATTENBOROUGH,
A Commissioner for taking Affidavits in the Supreme Court in the Colony of Victoria.

Affidavit of J. A. Monteath.

To all to whom these presents shall come: I, Henry Penketh Fergie, notary public by royal authority, duly authorized, admitted, and sworn, residing and practicing in the city of Melbourne, in the colony of Victoria, do hereby certify that Winfield Attenborough, before whom

[720] *the affidavit of James Austin Monteath on the other side written purports to have been sworn, is a commissioner of the supreme court of said colony for taking affidavits, duly appointed in that behalf, and that name W. Attenborough, subscribed thereto, and to the exhibit thereto annexed, is of the proper handwriting of the said Winfield Attenborough, and that to all acts by him, the said Winfield Attenborough, done in his said capacity or office, full faith and credit are due in judicature and thereout.

In faith and testimony whereof I, the said notary, have hereunto subscribed my name and set and affixed my seal of office, at Melbourne, in the said colony of Victoria, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] HENRY PENKETH FERGIE,
Notary Public, Melbourne.

I, James Austin Monteith, of Melbourne, in the colony of Victoria, clerk to Messrs. Bennett and Attenborough, of the same place, [721] solicitors, make oath and say as *follows:

1. I know and am well acquainted with Mr. H. B. Donaldson, of Sandridge, near Melbourne, aforesaid, ship-chandler, carrying on business as H. B. Donaldson & Co.

2. On being applied to by the said firm of Bennett & Attenborough for information as to supplies which they had understood had been made by the said H. B. Donaldson in the beginning of the year 1865, to the vessel (then in this port) known here as the confederate ship of war Shenandoah, the said H. B. Donaldson promised to send, and did send, to the said firm of Bennett & Attenborough, a document which he stated was the duplicate of his account against the said ship furnished by him to Captain Waddell, who was then her captain.

[722] *3. The said account was so placed, by the said H. B. Donaldson, in the hands of the said firm for the purpose of enabling the said firm to have a copy thereof made and verified by his affidavit, to be used in support of the claims of the American Government against the British government, known as the "Alabama Claims."

4. The said H. B. Donaldson stated, when so applied to, that he had been paid the amount of his said account by the hands of the captain or the purser of the said ship Shenandoah, and that he could depose to the fact that Messrs. Bright Brothers had put seven hundred tons of coal on board the said ship in this port.

5. A copy of the said account was accordingly made, and such copy is hereunto annexed, marked A.

6. The said H. B. Donaldson sent for and obtained from the said firm the said original account, on the plea that there were some inaccuracies in it which he wished to correct.

7. An affidavit was duly prepared by the said firm for the said H. B. Donaldson to depose to verifying the said copy account, and his aforesaid statements; but on being requested to swear to it, he said he would not do so unless he was paid the sum of fifty pounds for so doing.

J. A. MONTEITH.

Sworn at Melbourne, in the colony of Victoria, this 25th day of September, 1871, before me,

W. ATTENBOROUGH,
A Commissioner of the Supreme Court
of the Colony of Victoria, for taking affidavits.

[723] *A.

SANDRIDGE, *September* 21, 1871.

Goods shipped: SHENANDOAH, confederate war steamer,

Bought of H. B. DONALDSON & Co.,

Wholesale and retail ship-chandlers, &c.

			£	s.	d.
	1865.				
	Jan. 28.	To 100 $18\frac{2}{16}$ feet 6 x $1\frac{1}{8}$ T x G flooring = 1,200 feet, 30*s*	18	0	0
		To $\frac{3}{24}$ feet 3 x 3 red pine = 75 feet, 30*s*	1	2	6
		To 4 assorted nails, 2*s*; 3 — 2-inch cut, nails, 1*s*. 6*d*	0	3	6
		To $\frac{4}{20}$, $\frac{20}{21}$, $\frac{12}{14}$ feet 6 x $1\frac{1}{8}$ T x Cr. bowels, 687 feet, 30*s*	10	6	3
		To 8 pieces c. pine, 120 feet 30*s*.—£1 10*s*. 2*d*.; 17 feet 9 x 3 pine, 77 feet, 32*s*.—24*s*. 16*d*	2	14	6
		To $\frac{8}{16}$, $\frac{4}{18}$ feet $1\frac{1}{2}$ x $\frac{1}{2}$ do, 200, 30*s*.—£2. 10*s*.; $\frac{4}{17}$, $\frac{4}{18}$ feet 3 x 3 deal, 140 feet, 16*s*.—22*s*. 6*d*	3	12	6
	Feb. 4.	To 12 sheets sand-paper, 2*s*. 6*d*.; $\frac{4}{16}$, $\frac{3}{12}$, $\frac{9}{4}$ feet 11 x $1\frac{1}{2}$ blackwood To $8\frac{1}{2}$ feet 9 x $1\frac{1}{12}$ blackwood } 295 feet 4 inches,	4	18	4
		To $\frac{9}{16}$, $\frac{1}{4}$, $\frac{1}{2}$ feet 11 x $1\frac{1}{2}$; $\frac{11}{4}$, $\frac{19}{14}$ feet 3 x 2 deal, 150 feet 11 inches, 16*s*. 6*d*.	1	7	10
		To $\frac{8}{19}$, $\frac{3}{16}$ feet 11 by $\frac{3}{4}$-inch do., 200 feet, 26*s*., £2 12*s*.; $\frac{1}{8}$ feet 3 x 3, 32 feet 2 inches, 5*s*. 4*d*	2	17	4
		To $\frac{1}{21}$ feet 7 x $1\frac{1}{2}$, 21 feet 3 inches, 5*s*. 3*d*.; 5 2-inch clasp-nails, 2*s*. 6*d*	0	7	9
		To 1 gross $1\frac{1}{2}$-inch iron screws, 10*s*. 16*d*.; 2 gross $1\frac{1}{2}$-inch clasp-nails, 1*s*. 6*d*.; 4.3-inch enbruk, 2*s*	0	14	0
		To four pairs 2-inch brass butts, 3*s*. 6*d*.—14*s*.; 4 dozen $\frac{3}{4}$-inch brass screws, $7\frac{1}{2}$*d*.—2*s*. 6*d*.; 4 brass buttons, 1*s*	0	17	6
[724]		*To 4 brass screws, 6*d*.; 4 small brass knobs, 2*s*.; 7 pounds 2-inch cut nails, 3*s*. 6*d*.	0	6	0
		To 7 pairs 2-inch brass butts, 4*s*.—£1 8*s*.; 5 dozen $\frac{3}{4}$-inch iron screws, 2*s*. 6*d*	1	10	6
		7 brass buttons, 1*s*. 9*d*.; 7 brass screws, 6*d*.; 3 dozen $\frac{1}{2}$-inch iron screws, 1*s*.—3*s*	0	5	3
		To 4 dozen $\frac{5}{8}$-inch brass screws, 1*s*.—4*s*.; 7 dozen $\frac{5}{8}$-inch iron screws, 15*s*. 10*d*	0	9	10
		To 2 dozen iron drawer-knobs, 8*s*.—16*s*.; 1 dozen mahogany knobs, 6*s*	1	2	0
		To 2 Only drawer-locks, 3*s*. 6*d*.—6*s*.; 3 Only drawer-locks, 7*s*	0	13	0
		To 1 set clocks, £9 6*s*	0	9	6
		SAIL-MAKERS' DEPARTMENT.			
		To 110 fathoms 5-inch B rope, £8 15*s*.; 1 setting-fid, 3 x 7 inches at bottom, £3. 10*s*. (220, 1*s*.)	12	5	0
		To marline prickers, 3*s*.—4*s*.; 50 seaming-needles, 8*s*. 4*d*	0	12	4
		To 6 sail hooks, 6*s*.; iron-wire shapeline, 16*s*	1	2	0
		To 60 yards white duck, 1*s*. 9*d*.—£52 10*s*.; 32 gallons molasses, 4*s*. 16*d*.; 6 casks, (3*s*.) 3*s*. 10*d*	57	16	0
		To 50 gallons lime-juice, 5*s*.—£12 10*s*.; 100 gallons rum, 4*s*. 9*d*.—£23 15*s*	36	5	0
[725]		*To 40 fruits, £1 5*s*.; 2 kegs pickles, 36 gallons, £9	10	5	0
		To 2 cases white lead putty, £2 16*s*	5	12	0
		To 2 boatswain's calls, silver, 18*s*	1	16	0
		To 8 globe lamps, assorted sizes, £7 4*s*.; 2 lead putty, £5 12*s*.	12	16	0
		To 4 pieces $\frac{1}{2}$ lamp-tape, 12*s*	0	12	0
		To $3\frac{1}{2}$ c. lead putty, £9 16*s*	9	16	0
		To 1 c. lead putty, £2 16*s*.; 280 coffee, $5\frac{3}{4}$	17	19	4
		To 43 gallons Jamaica rum, £10 4*s*. 3*d*.; 20 jars table-salt, 15*s*	10	19	3
		To 6 dozen pepper, £4 16*s*.; 6 dozen mustard, £3 7*s*	7	17	0
		To 1,500 preserved meats, £68 15*s*.; 600 soup and bouilli, £27 10*s*.	96	5	0
		To 4 c. preserved potatoes, $£10\frac{5}{4}$; 2 dozen blacking-brushes, 30; 3 extra and bond	14	0	4
		To towels, 4, 15	5	17	0
		To labor paid, £121	121	0	0
		To 1 dozen brass buttons, 9*s*. 6*d*.; 3 dozen do. knobs, 36*s*., 220, 11*s*, 0*d*.	2	5	6
		To 3 gallons bo. oil, 18*s*.; 1 c. white lead, 48*s*	3	6	0
		To 7 patent driers, 10*s*. 6*d*.; $\frac{8}{17}$ feet 11 x $\frac{3}{4}$ red deal, 1*s*. 14*d*	2	4	6

1865.		£	s.	d.
Feb. 4.	To 1⅓ feet 21 x 1 cedar, 14s.; 19 feet 13 by ½ do., 5s.	0	19	0
	To ¼, ⅝, ⅛, ⅙, feet 3 x 3 cedar, ⅜ feet 3 x 2 cedar, 24 feet, 8d	0	16	0
Feb. 3.	To 1 turnery, 2s. 6d.; 4 lbs. ½ inch nails 4 lbs. 2-inch nails, 4s	0	6	6
	To 1 quart bo. oil	0	2	9
Feb. 4.	To $\frac{25}{18}$ feet 6 x 1¼ T x G boards, 525 feet, 30s.	7	17	6
	To 104 feet shelving, 34s. 8d; $\frac{2}{14}$ feet 16 x ½ inch pine, 11s. 10d.	2	6	6
	To 54 feet inch pine, 18s.; $\frac{1}{12}$, $\frac{1}{15}$ feet 9 x 3 red pine, 23s. 4d	2	1	4
	To $\frac{3}{16}$ feet 3 x 3 inch pine, 16s.; 2 pairs 2 inch brass butts 8s. 4d.	1	4	0
[726] *Feb. 6.	To 6¼-inch nails, 6.3-inch do., 10; 2½ do., 10 pounds 2-inch, 6326	0	16	0
	To 6¾ do., 4s.; 8½ pieces 3-inch brass butts, 203	2	4	3
	To 5 dozen ½ I screws, 5s. 8d.; 5 dozen 1¼ brass do., £76 4s. 6d	0	12	6
	To 2 dozen 2¼ brass do., £5 2s. 6d.; 3 brass cabin-locks, 30s	1	15	0
	To 24 nails, assorted, 12s.; 646 feet shelving, 30s. 9s. 13s	10	15	10
	To 535 feet lumber, 6 £7 9s. 9d.; 212 feet ½-inch c. pine, 30, 3, 2, 6, 30	8	17	8
	To $\frac{9}{22}$, $\frac{8}{3}$, $\frac{9}{14}$ feet 6 x 1⅓ T x G boards, 592 feet, 30s	8	17	8

WARD-ROOM—MESS ORDER.

		£	s.	d.
Feb. 7.	To 24 dozen Alsop's ale, 12s. 12d.; 8 dozen pp. Tennent's do., 2s. 14d	15	6	0
	To 3 dozen sherry, 6s. 15d.; 4 dozen Johnston's claret, £6 0s. 6d. 10, 6	12	15	0
	To 1 bag copper, 140, £7 11s. 8d.; 1 barrel crushed loaf-sugar, £6½, 200 pounds	13	11	10
	To 1 dozen hams, £10 14s., 140; 1 box macaroni, 9s. 6d	11	3	7
	To 1 dozen large bo. currie, 36s.; 1 tin lard, 18, 2, 5½	3	4	2
	To 1 case sardines, 200.90, £7 10s.; 1 dozen baking-powder, 14s.	8	4	0
	To olives, 24s.; 100 hams, £5 0s.; 1 cask Pilchard's, 45s	8	9	0
	To 1⅓ dozen cups and saucers, 18s.; 1½ dozen soup plates, 18s	1	16	0
	To 1½ dozen dinner do., 18s.; 1⅓ dozen breakfast do., 13s. 6d	1	14	6
	To 1 dozen mold tumblers, 12s. 9d.; 1 block-tin soup-tureen, 10s. 6d	1	5	6
	To 120 boxes beef and soup and bouilli, 11s	5	10	0
	To 4 vegetable dishes, 24s.; 1 tin tray-waiter, 9s. 6d	1	13	6
	To 2 large wash-basins, 6s. 11d.; 4 dozen Allsop's ale, £2 6d	2	17	0
	To 1 case 2 No. 2 Moselle, £2 17s. 6d.; 1 dozen brandy, best, £2 19s. 4d	6	16	0

SUNDRIES.

		Entre bonds.			£	s.	d.
	To 4 cases Geneva, £40; 1 log-book, 7 s. 16d	4	7	6			
	To 2 cases Geneva, £40; 20s	2	0	0			
	To 4 cases Geneva, £40; 20s	4	0	0			
					10	7	6
[727] *1865.							
Feb. 7.	To 6 cask lime, 54s; 12 w. w. brushes, 60s				5	14	0
	9 5						
	To 1 fire-engine and hose				45	0	0
Feb. 13.	To 18 Galen thimbles, 2¾ in score for 7-inch rope, 4s				3	12	0
	To 1 fine brass padlock, 4s. 10d.; 1 oil-feeder, 4s. 6d				0	9	4
	5 1 6						
	To 6 beeswax, 21; 6 letherage, 9s.; 6 galls. turp., 4s. 17d				6	0	0
	3 6 16 15						
	To 3 lamp black, 9; 6 blk. lead, 6d.; 6 red do, 4 black 6d				0	19	0
	To 2 doz. brs. screws, 1s. 6d.; hooks, 12s.; 2 doz. sheets emery				0	18	0
	To one saw for cutting metal				0	10	6
	To 4 bull's eye lantherns, £2 2s.				2	2	0
	To 2 11-inch I br. match-blocks, 55s				5	10	0
	To 1 shoe-block				1	10	0

ENGINEER.

	£	s.	d.
To 4 kegs soft soap, 256s. 10d	10	13	4

CAPTAIN.

				£	s.	d.
To 1 doz. mongers-all, 11s. 6d; 1 long oil-skin coat, 30s.	0	1	6			
To 1 oil-skin hat, 4s.; 1 pr. I. R. boots, 35s	1	19	0			
				4	0	6

SHIP CONT.

		£	s.	d.
1865.				
Feb. 9.	To 500 sup. shelving, 7*s*. 10*d*.; 463 F. T. & G. timber, £6 18*s*. 10*d*.	14	8	10
	30.			
	To 160 ft. 6 x 1⅓ in. Scotch flooring, 4*d*	2	13	4
	30			
	To 24 ft. 9 x 1 red deal, 8*s*.; 200 11½ x 1¼ batten pine	1	8	0
	10 10			
	To 26 in. dead-locks, 12*s*;; iron chest handles, 18*s*	1	10	0
	To 1 doz. 3 x 4 in bo. cabin door hooks	0	19	0
	To 6 lb. 2¼ in. nails, 3*s*.; 3 prs. 2 in. brs. butts, 9*s*	0	12	0
	To 3 doz. 3¼ in. brs. screws, 4*s*. 6*d*.; $\frac{6}{14}$ $\frac{1}{20}$ 3 x 2 deal, 9*s*	0	13	6
	16 15 12			
[728] *1865.				
Feb. 9.	To 12 dozen ⅝-inch iron screws, 12*s*.; 7 dozen ⅝-inch brass do., 14*s*	1	6	0
Feb. 10.	To 18 nails, assorted	0	9	0
	To 1 wool brad, 3*s*. 6*d*.; 12 sheets sand-paper, 2*s*. 6*d*	0	6	0
	2½			
	To 1 gross 1¼ I screws, 9*s*.; 120 feet cedar, 10*s*	3	19	0
	To ⅛, ½-feet 11½x3 Huron pine, 14*s*.; $\frac{1}{17}$ feet 3x2-inch, 8x6	1	2	6
	24 17			
	To 3 hours' turning, 6*s*.; $\frac{3}{17}$ feet 3x2 deal, 6*s*. 6*d*.	0	12	6
	50 feet, 13			
Feb. 13.	To 2 1½ wrought nails, 6*s*.; 6 1¼ nails, 3	0	9	0
	3 1			
	To $\frac{4}{18}$ 13x2 deal, 75 ...15	0	11	3
	To 6 brass 7-inch locks, 21*s*.; 6 do. do., 12*s*.; 2 do. do., 5*s*	1	18	0
	2 6			
	To 2 dozen mahogany knobs, 5*s*. 6*d*.; 4 pairs 2½-inch brass butts, 12*s*	0	17	6
	To 4 dozen iron screws, 6*s*.; 3 brass cap-locks, 10*s*. 6*d*.	0	16	6
	3 6			
	To 1 dozen small brass screws, 1*s*. 6*d*.	0	1	6

CARPENTERS' STORES.

		£	s.	d.
Feb. 16.	To 6 sheets pure copper, 2*s*. 9*d*.; 12 pounds wrought nails, 36*s*.	4	5	0
	28 19 3			
	To 20 5-inch spikes, 6*s*. 8*d*.; 6 dozen I screws, assorted, 6*s*	0	12	8
	4			
	To 400 feet 11x3 pine, £18 6*s*. 8*d*	18	6	8
	1,100 feet, 4.			
	To 100 feet 3x3 soft scantling	1	5	0
	To 484 feet 1½-inch pine boards ...3	6	1	0
	To 300 1	3	15	0
Feb. 15.	To 1 wash-basin, 5*s*.; 1 wash-jug, 5*s* ...10			
	To 1 wash-basin, 5*s*.; 1 wash-jug, 5*s*.; scales ...10			
		1	0	0
[729]	*To $\frac{5}{7}$, ⅙, ⅓, and ¾-inch Huron pine, 120 feet			
	To ½, ¼ feet, 2½x2½-inch do. do., 10,130 feet, 7*s*	3	15	10
	To turning	0	3	0
	To 7 pounds nails, assorted, 3*s*. 6*d*.; 2 bells and springs, 7*s*. 6*d*	0	11	0
	6 3 9			
	To 2 cages, 3*s*.; 2 purchase-cranks, 4*s*.; 4 pillars	0	13	0
	1 2 1 6			
	To 4 headers, 2*s*.; 2 pulls of wire check-spring, 2*s*	0	10	0
	3			
	To 6 large plates glass ...9	2	14	0
	To 6 pounds 1¾-inch nails, 4*s*.; ⅓ copper wire, 2*s*	0	6	0
	To 2 dozen cup-hooks, 18*s*; 1 pound wrought brads, 3*s*	1	1	0
	9			
	To 4 pounds nails, 2*s*.; 2 dozen 2-inch screws, 3*s*	0	5	0
	6 1 6			
	To 1 dozen 2-inch brass-screws	0	3	0
		10	1	10
Feb. 5.	Carpenters' account	134	19	0
		940	7	8

[730] *Mr Edgecombe, consul, to Mr. Fish, Secretary of State.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Cape Town, November 4, 1871.

SIR: In accordance with instructions received from the Department of State, dated August 4, 1871, No. 102, I have the honor to report that I have made a thorough investigation of the transactions of the Alabama at this and other ports of the colony during the years 1863, 1864.

I find it very difficult to obtain any reliable information on the subject, for those that furnished her with aid and comfort during that period are not willing to acknowledge it; such as I have been able to obtain, I transmit herewith for the information of the United States Government.

1. That I have examined the records of this office thoroughly, and find no remonstrance from Mr. Graham to Governor Wodehouse, after August 4, 1863, a copy of which is attached to this dispatch.

2. The amount of coal received on board the Alabama in March, 1864, at this port, was 208½ tons, as per deposition No. 5; no repairs were made at this time; the coal was shipped on board by William Anderson & Co., who acted as her agent at this port and Simon's Bay.

3. She did not ship any crew at this time, but during her stay [731] in Simon's Bay, in September, 1863, she *shipped eleven men; the party who shipped them has gone to the diamond-fields.

4. The crew of the Tuscaloosa were paid off at Simon's Town, by Messrs. W. Anderson & Co., as per affidavit No. 2; the officers went from here to Southampton, in the mail-steamer, of which Messrs. W. Anderson & Co. are the agents.

5. The Florida did not visit this colony. Finding it difficult to obtain information from outside parties, I applied to the governor, and received an answer from him regretting his inability to furnish me any, as the vessels in question were viewed as men-of-war, and treated as such. I then sent a man to the custom-house, and they refused to allow him to examine the records. I addressed the governor again, asking permission to copy the manifest of steamer Kadie, of September 17, 1863. On receiving permission, I had copies taken here and at Simon's Town, as per depositions three and four. The supplies received by the Alabama in 1863 were shipped from this port to Simon's Bay, as per manifest of steamer Kadie, the repairs as per deposition No. 1.

I have the honor, sir, to be your obedient servant,

[SEAL.] W. W. EDGECOMB,
United States Consul.

Number of inclosures, 10; 6 depositions; 4 letters.

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[732] No. 1.

On the arrival of the Alabama at this port in August, 1863, I heard that the vessel required calking, and I went on board to see Captain Semmes. I arranged with him to do the work required within a period of five days. I calked her topsides and decks, and when the work was completed, I was paid the sum of forty pounds and fourteen shillings by the paymaster on board the vessel.

A. N. BLURK,
Budge & Blurk, Shipwrights.

Sworn before me at Simon's Town this 7th day of October, 1871.

P. H. MARTIN,
Justice of the Peace for the District of Simon's Town.

COLONIAL OFFICE, *October* 31, 1871.

SIR: In reply to your letter of the 21st instant, I have the honor to inform you that in accordance with the request made therein, the governor has authorized the honorable the collector of customs to allow any person sent by you for the purpose to examine and to make a copy of the manifest of the steamer Kadie, both at this port and at Simon's Bay.

I have the honor to be, sir, yours, &c.,

CHARLES MILLS,
(Signed for the) *Colonial Secretary.*

[733] *W. W. EDGECOMB, Esq.,
Consul for the United States of America, Cape Town.

A true copy from the original exhibited to me this day by W. W. Edgecomb, Esq., United States consul, Cape Town.

Cape Town, November 2, 1871.

[SEAL.] G. J. DE KOSTE,
Notary Public.

No. 2.

In the matter of the confederate steamer Alabama.

Gordon Rennick, of Simons Town, maketh oath and saith, that this deponent was a resident in Simons Town, in the colony of the Cape of Good Hope, in the year 1863. That whilst this deponent was living there, to wit, on the 8th day of August, 1863, a bark or vessel called the Tuscaloosa, under Confederate-American colors, was brought into the port of Simons Bay, by the then Confederate-American steamer Alabama, commanded by Captain Semmes. That said bark or vessel remained in said port a considerable time. That whilst there the men of said bark or vessel Tuscaloosa were paid off and received their wages through the firm of William Anderson & Company, who carry on business as [734] merchants at the aforesaid *port of Simons Town.

GORDON RENNICK.

Sworn at Cape Town, Cape of Good Hope, this 20th day of October, 1871, before me.

REES FISCHER,
Justice of the Peace of Cape Town.

No. 3.

PORT OF CAPE TOWN. No. 23.

Content in the steamship Kadie, J. Fowler, master, for Simons Bay 158 tons, no guns, 18 men.

Passengers or troops.—British built, of Cape Town.

Marks and number of packages.	Shippers.	Quantity and description of goods.	Consignees.
R. B.	W. Anderson & Co.	180 ton coal. 7 barrels pork. 5 hhds. rum.	W. & H. Anderson & Co.

I, James Fowler, master of the vessel above named, do declare that the content above written, now tendered and subscribed by me, is a just and true account of all the goods laden on board my ship for this present voyage, and of the names of the respective shippers and consignees of the said goods, and of the marks and numbers of the packages containing the same.

[735] *Signed and declared before me, at the custom-house, at the port of Cape Town, the 18th day of September, 1863.

JAMES FOWLER, *Master.*

NORTH WHARF, *September* 18, 1863.

One general sufferance.

A. BAYNES, "*S.*"

RECAPITULATION.

Cargo, as within. Content, including:

British Possessions: 5 hhds. rum, 28 galls., ex-Angelo, Mauritius. Warehoused, 3d October, 1862.

C. WELCH.

Foreign: 7 barrels pork, 12 cwt. 2 qrs. 0 lbs., ex-Granton, London. Warehoused, 7th February, 1863.

C. WELCH.

Searcher's Office, 18th September, 1863. Cleared.

J. H. MACAULLEY, "*S.*"

Raphael Daniel Norden, of Cape Town, Cape of Good Hope, clerk, maketh oath and saith, that the above paper, writing, or document, is a true transcript or copy made by this deponent from a certain custom-house entry with a declaration thereon made and subscribed by James Fowler, master of the screw-steamer Kadie, together with the [736] recapitulation on the back thereof, *signed by the respective officers of customs, which entry, declaration, and recapitulation are duly filed of record in the custom-house at the aforesaid port of Cape Town.

R. D. NORDEN.

Sworn at Cape Town, Cape of Good Hope, on this the third day of November, 1871, before me.

R. LESURE,
Justice of the Peace for Cape Town.

No. 4.

I hereby declare that I have this day examined personally the report at the custom-house of the arrival in this port on the 19th September, 1863, of the coasting steamer Kadie (in the year 1863.) It states as follows:

From Cape Town to this port and back to Cape Town, having on board to be shipped to the Alabama: 180 tons coal, 7 barrels pork, 12 cwt. 2 qrs. 0 lbs., 5 barrels rum, 287 gallons, 3 bales merchandise.

Signed by collector of customs.

G. W. BROWNING.

Signed and certified as a true report by the master of Kadie.

JAMES FOWLER.

[737] *J. W. WHITE.

Simons Town, Cape of Good Hope, sworn before me this 2d November, 1871.

P. W. MARTIN,
Justice of the Peace.

No. 5.

From Messrs. Akerberg & Behrens book, shipping and landing agents, Cape Town:

March, 1864.—To shipping to steamer Alabama, 208½ tons coal, 80 tons stores, for account of Messrs. William Anderson, Saxon & Co.

Raphael Daniel Norden, of Cape Town, Cape of Good Hope, maketh oath and saith, that the aforegoing is a true and faithful extract made by this deponent from the books kept by the late firm of Akerberg & Behrens, shipping and landing agents, Cape Town.

R. D. NORDEN.

Sworn at Cape Town, Cape of Good Hope, on this 3d day of November, 1871, before me.

R. LESURE,
Justice of the Peace for Cape Town.

No. 6.

From Mr. R. S. Atwell's book, bread and biscuit baker, Cape Town:

[738] *March 24, 1864.—To 13,000 pounds biscuit supplied to steamer Alabama, for account of Messrs. William Anderson, Saxon & Co.

Raphael Daniel Norden, of Cape Town, Cape of Good Hope, maketh oath and saith, that the aforegoing is a true and faithful extract made by this deponent from the books of Mr. R. L. Attwell, bread and biscuit baker, Cape Town.

R. D. NORDEN.

Sworn at Cape Town, Cape of Good Hope, this 3d day of November, 1871, before me.

R. LESURE,
Justice of the Peace for Cape Town.

UNITED STATES CONSULATE, CAPE TOWN,
October, 1871.

SIR: I have the honor to bring to your notice that the Department of State, Washington, has called upon me to collect information relative to the proceedings of the confederate vessels which touched at the Cape during the years 1863 and 1864, more especially those of the Alabama. I find I cannot obtain particulars of the stores and coals supplied to the latter vessel except from the custom-house records. I therefore request that you will be so good as to direct a return to be made of all supplies which have been shipped on board the Alabama or other confederate vessels, specifying the quantity entered to [739] *each, and by whom supplied. I shall feel much obliged by your early compliance with this request.

I have the honor to be, sir, &c.,

W. W. EDGECOMB,
United States Consul.

His Excellency Sir HENRY BARKLY,
Governor, &c., Cape of Good Hope.

COLONIAL OFFICE, *October* 17, 1871.

SIR: I have the honor to acknowledge receipt of your letter of the 9th instant, wherein you request that instructions may be issued for preparation from the custom-house records of a return, showing all supplies shipped on board the Shenandoah and other confederate vessels which touched at the Cape in the year 1863 and 1864, and specifying the quantities entered to each and by whom supplied. In reply, I am directed by his excellency the governor to acquaint you, that upon reference to the honorable the collector of customs, it appears that, as the vessels in question were viewed as "men-of-war" and treated as such, no account was taken by that officer's department of the coals, &c., supplied thereto. His excellency therefore regrets his inability to furnish the information which you desire.

I have the honor to be, sir, &c.,

CHARLES MILLS,
[740] (Signed for the) *Colonial Secretary.*

W. W. EDGECOMB, Esq.,
Consul for the United States of America, Cape Town.

A true copy from the original exhibited to me this day by W. W. Edgecomb, United States consul, Cape Town.

[SEAL.] G. J. DE KOSTE,
Notary Public.

CAPE TOWN, *November* 2, 1871.

UNITED STATES CONSULATE, CAPE TOWN,
October 21, 1871.

SIR: I have the honor to acknowledge the receipt of your letter of the 17th instant, in answer to mine of the 9th. I regret that you can give me no information concerning the transactions of the Alabama, and other confederate vessels at this and other ports of the colony, during the years 1863 and 1864. By referring to the Cape Argus of September 22, 1863, I find that the Alabama was in Simons Bay, and that Captain Semmes reports that he is expecting the steamer Kadie from Table Bay with 200 tons of coals. I also learn that the Kadie did clear from

[741] this port on the 17th of September, *1863, with 180 tons of coals and other stores for Simons Bay, and that the coals and stores were put on board the Alabama at the latter port. On application being made at the custom-house (by a person employed by me) to examine the manifest of steamer Kadie, it was refused unless he could show an order from you. Will you please to order a copy of manifest from this port and Simons Town, for my use.

I have the honor, sir, &c.,

W. W. EDGECOMB,
United States Consul.

His Excellency Sir HENRY BARKLY,
Governor, &c., of the Cape of Good Hope.

Protest.

UNITED STATES CONSULATE, CAPE TOWN,
August 4, 1863.

SIR: From reliable information received by me, and which you also are doubtless in receipt of, a war-steamer called the Alabama is now in Saldanha Bay, being painted, and discharging prisoners of war. The vessel in question was built in England to prey upon the commerce of the United States of America, and escaped therefrom while on a trial-trip, forfeiting bonds of £20,000, which the British government exacted under the foreign-enlistment act. Now, as your government has a treaty of amity and commerce with the United States, and has not re- [742] cognized the persons in re*volt against the United States as a government at all, the vessel alluded to should be at once seized and sent to England, from whence she clandestinely escaped. Assuming that the British government was sincere in exacting the bonds, you have doubtless been instructed to send her home to England, where she belongs. But if, from some oversight, you have not received such instructions, and if you decline the responsibility of making a seizure, I would most respectfully protest against the vessel remaining in any port of this colony another day. She has been four days in one bay of the colony already, and a week previously on the coast, within three leagues of the land, and has forfeited the right to remain an hour longer by this breach of neutrality. Painting a ship does not come under the head of necessary repairs, and is no proof that she is unseaworthy, and to allow her to visit the other ports after she has set the Queen's proclamation on the subject of belligerent rights at defiance, would not be regarded as in accordance with the spirit and purpose of the document.

Yours, with most distinguished consideration and obedience,

WALTER GRAHAM,
United States Consul.

His Excellency Sir PHILIP E. WODEHOUSE, *Governor.*

True copy of the original on file at this office.
[SEAL.] W. W. EDGECOMBE,
United States Consul.

CAPE TOWN, *October* 12, 1871.

[i] # *COUNTER CASE

PRESENTED ON THE PART OF THE

GOVERNMENT OF HER BRITANNIC MAJESTY

TO THE

TRIBUNAL OF ARBITRATION

CONSTITUTED

UNDER ARTICLE I OF THE TREATY CONCLUDED AT WASHINGTON ON
THE 8TH MAY, 1871, BETWEEN HER BRITANNIC MAJESTY
AND THE UNITED STATES OF AMERICA.

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*PART I.

INTRODUCTORY STATEMENT.

PART I.—Introductory statement.

The government of Her Britannic Majesty now presents to the tribunal of arbitration its counter case, or reply to the case submitted on the part of the United States, so far as a reply appears to be necessary or admissible.

To the second chapter of the American Case, which imputes to the British Government hostile motives, and even insincere neutrality, no reply whatever will be offered in this counter case. The British government distinctly refuses to enter upon the discussion of these charges. First, because it would be inconsistent with the self-respect which every government is bound to feel; secondly, because the matter in dispute is action, and not motive, and therefore the discussion is irrelevant; thirdly, because to reply, and to enter upon a retaliatory exposition, must tend to inflame the controversy which, in the whole tone and tenor of its case, the British government has shown its desire to appease; and lastly, with respect to the charges themselves, if they were of any weight or value, the British government would still contend that the proper reply to them was to be found in the proof which it has supplied that its proceedings have throughout, and in all points, been governed by a desire, not only to fulfill all clear international duties toward the Government of the United States, but likewise, when an opportunity was offered, even to go beyond what could have been demanded of it as of right, in order to obviate all possibility of cavil against its conduct.

Neither will this counter case contain any reference whatever to the subject of indirect losses. Her Majesty's government is engaged in a correspondence with the Government of the United States on this subject, pending which this counter case is presented, without prejudice to the position assumed by Her Majesty in that correspondence, and under the reservations more particularly stated in a note accompanying it, which will be, at the same time, delivered to the arbitrators.

VESSELS TO WHICH THE CLAIMS OF THE UNITED STATES RELATE.

Vessels to which the claims of the United States relate.

Her Britannic Majesty's government believed itself to be, and was in fact, justly entitled to assume that the claims which it had to meet would be found to relate exclusively to the four vessels known as the Florida, Alabama, Georgia, and Shenandoah, or some or one of them; these being the only ships in respect of which claims had been made by the Government of the United States against Great Britain. It appears that, besides claiming on account of all of these four vessels, the United States now claim on account of nine other vessels, none of which are alleged to have been in any manner armed, fitted out, or equipped for war within British territory. Three of these are stated to have been captured, armed, and employed as tenders by the officer commanding the Florida during the cruise of that vessel, and one by the commander of the Alabama. Of two others, the Sumter and Nashville, it is alleged only that they received hospitalities in British ports, while cruising as ships of war of the Confederate States; of two more, the Tallahassee and Chickamauga, that, having been originally built in England, and employed in carrying cargo to and from ports of the Confederate States, they were converted into cruisers by the confederate government; and of the ninth, the Retribution, that her commander contrived on two occasions to carry a prize captured by him on the high seas into the territorial waters of an island belonging to Her Majesty's dominions, and there to dispose of or destroy the cargo.

[2] *As to all of these nine vessels, but more especially as to five of them, it might justly be maintained that they ought not to be reckoned among the vessels which have given rise to the claims generically known as the Alabama claims, and that no complaints in respect of them ought to be considered or received by the arbitrators. Her Britannic Majesty's government, however, has not thought proper to raise this objection. It contents itself with directing the attention of the tribunal to the fact that neither in the course of the war nor during the long period which has elapsed since its conclusion have any claims whatever been made upon Great Britain by the United States on account of any of these vessels.

There have been further introduced into the list of claims losses for captures by two vessels, named the Boston and Sallie, which are not mentioned in the Case, and expenses said to have been incurred in the pursuit of a third, (the Chesapeake,) as to which the Case is equally silent. Her Majesty's government presumes that this has been done through inadvertence. No award can be made which shall comprehend or take into account the acts of vessels as to which the United States have not even alleged any failure of duty.

GENERAL CHARACTER OF THE EVIDENCE.

General character of the evidence adduced by the United States.

It would be superfluous to remind the tribunal that the conclusions at which it will arrive must of necessity be formed, not upon what the Government of the United States may allege, but upon what it shall be able to prove. Nor can it be necessary to point out that, while it is not the duty of the tribunal to apply to the evidence produced on either side rules drawn from the law or methods of procedure established in any particular state, the credibility and value of that evidence must nevertheless be tried by those general principles of reason and justice which are applicable to all testimony, in whatever forum it may be offered, for whatever purpose, or under whatever circumstances. But it may be convenient that the attention of the arbitrators should at the outset be directed to the character of some portions of the evidence on which the United States rely.

Much of the evidence adduced on behalf of the United States has been also laid before the arbitrators by Great Britain, either as supporting the case of Her Britannic Majesty's government, or as forming part of the official correspondence and other materials of which it was proper that the arbitrators should be in possession before proceeding to adjudicate on the matters referred to them. Much, therefore, of the evidence on each side is common to both, though the two parties differ in the use which they respectively make of it.

Among the other documentary evidence cited or referred to in the Case of the United States are reports and dispatches from consuls or consular officers of the United States, who were during the war, or have since been, resident in ports within Her Majesty's dominions. Of these persons it may be assumed that they were gentlemen worthy of credit when relating anything within the range of their personal knowledge. As to statements made by them on the authority of others the credit to be attached to these must depend in every case on the knowledge and veracity of the informant, not on those of the reporter of the information. Statements made on the ground of alleged notoriety or public rumor are evidence only—and that of a very vague and unsatisfactory kind, since little reliance can be placed on assertions which, from their very nature, there can be no means of testing—that a number, greater or less, of persons who are themselves unknown, and whose credibility and means of information are likewise unknown, believe, or have reported, a supposed fact to be true. It should be added that these officers were, as was natural, zealous—sometimes to indiscretion—in the cause of their Government; that they shared to the full, with their countrymen at home, in the excited and irritable feelings which are generated by civil war, and were, like their Government, firmly impressed with the erroneous idea that all armed vessels of the Confederate States ought, in foreign ports, to be regarded and treated as piratical. The admission of a confederate ship on the same terms as a United States ship was by itself, in their view, an offense against the United States; and this error led them into many misconceptions and colored throughout the reports which they addressed to their Government.

The Government of the United States has appended to its Case, and has frequently referred to and invoked as evidence against Great Britain, a mass of confederate papers, the greater part of which consists of correspondence said to have passed between persons who were hired and employed during the war for various purposes by the confederate government and officials of that government, while the rest is of a private and still less authentic character. Most of these papers are said to have been "captured [3] *at the taking of Richmond, and at other times;" and they, or such portions of them as the Government of the United States has thought fit to make public, are now made known to Her Britannic Majesty's Government for the first time. Of the authenticity of them and of the manner in which they came into the possession of the Government of the United States, Her Britannic Majesty's government has no knowledge whatever beyond that which it derives from the above-mentioned statement, which it willingly accepts as true. Of the persons by whom and the circumstances under which the letters were written, and of the character and credibility of the writers, it knows nothing whatever. They are persons with whom this government had nothing to do and whose very existence was unknown to it; and it does not admit as evidence against Great Britain any statements which they may have made to those who employed them or to one another.

Some notice must here be taken of the use which has been made, in the Case of the United States, of opinions recently expressed by one or two living writers respecting the matters referred to the tribunal. One of these (Dr. Blüntschli) is a jurist of celebrity, who, in the short paper written by him on the subject, has with great propriety guarded himself against being supposed to pronounce any decisive opinion, frankly admitting the inadequacy of his information, which, indeed, he appears to have derived entirely from a speech delivered in the Senate of the

United States. On this point, however, Her Britannic Majesty's government has but one remark to make. Whatever qualifications these writers might be found to possess for forming a judgment on the question, if they had been acquainted with the facts—a matter on which Her Majesty's government has no opinion to express—they are not the persons selected as arbitrators in this case. The eminent persons who have been so selected will form their conclusions under the definite sense of responsibility proper to a high and regularly constituted judicial tribunal, after hearing both sides, and upon a full and complete knowledge, such as no man can possibly have possessed before, of all the facts of the case; and Her Britannic Majesty's government is well assured that they will feel it to be, as it is, their first duty to form those conclusions for themselves, upon the facts and arguments brought before them, absolutely uninfluenced by any opinions which any writer, be he who he may, has permitted himself to express, whether on one side or on the other.

It is well known to the arbitrators that when, on former occasions recorded in history, jurists have undertaken to determine the merits of international questions actually in controversy, the judgments so pronounced have been held questionable, as open to the suspicion of partisanship, and have in fact been often influenced by a bias, the precise causes of which it might be difficult to ascertain. This alone is sufficient reason why weight should not be assigned to opinions put forward *post litem motam.*

*PART II.

ARGUMENT OF THE UNITED STATES ON NEUTRAL DUTIES.

PROPOSITIONS AFFIRMED BY THE UNITED STATES.

PART II.—Argument of the United States on neutral duties.

Propositions affirmed by the United States.

In Part III of the Case of the United States an endeavor has been made to furnish the arbitrators with a definition of the duties which Great Britain, as a neutral power, was bound to observe toward the United States during the war. At the close of an elaborate dissertation on this subject, the Government of the United States sums up the conclusions which it conceives itself to have established, in the form of twelve propositions. These propositions it regards as governing the questions involved in the claims which it submits to the arbitrators.

Her Majesty's government believes that it will adopt the course most convenient to the tribunal, by explaining at once and in the first place how far it assents to the propositions laid down by the United States and how far it dissents from them; examining afterward, so far as may be necessary, the grounds on which the conclusions of the United States are formed, and stating its own conclusions on such points as appear to be in dispute.

The propositions advanced on the part of the United States are the following:[1]

"1. That it is the duty of a neutral to preserve strict and impartial neutrality as to both belligerents during hostilties."

The British government willingly assents to this proposition. No one, indeed, has yet been found to deny that it is the duty of a neutral power to be neutral; or that neutrality is, by its very definition, a condition of impartiality in matters relating to the war; or to affirm that it is possible to be neutral as to one of two belligerents without being neutral as to the other.

"2. That this obligation is independent of municipal law."

The British government accepts this proposition also.

"3. That a neutral is bound to enforce its municipal laws and its executive proclamation, and that a belligerent has the right to ask it to do so, and also the right to ask to have the powers conferred upon the neutral by law increased, if found insufficient."

The British government does not dispute that a belligerent government may, if it think fit, ask for any of these things. But that a neutral power is under an international obligation to comply with the request, or to enforce its municipal laws and all proclamations or orders issued by the executive government, is far from being universally true; t is admissible only under very material qualifications, which will be presently stated. Still less can it be admitted to be generally true that a belligerent power has a right to call upon the neutral state to make changes in its domestic legislation.

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[1] Case of the United States, pp. 210 *et seq.*

"4. That a neutral is bound to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace.

"5. That a neutral is bound to use like diligence to prevent the construction of such a vessel.

"6. That a neutral is bound to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war against any power with which it is at peace, such vessel having been specially adapted, in whole or in part, within its jurisdiction, to warlike use.

"7. That a neutral may not permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other.

"8. That a neutral is bound to use due diligence in its ports or waters to prevent either belligerent from obtaining there a renewal or augmentation of military supplies, or arms for belligerent vessels, or the recruitment of men."

Great Britain adheres to the three rules inserted in Article VI [6] of the treaty of *Washington, and accepts them in the words in which they are there expressed, while it considers those rules as exceeding in some material respects the obligations which, independently of them, could have been established by international law against a neutral power free from all engagements on the subject, direct or indirect, with a belligerent. The British government is willing to discuss the construction of these rules, but declines to admit any deviation from or enlargement of them. The statement that a neutral government "is bound to use like diligence to prevent the construction of such a vessel" appears to Her Majesty's government to be such a deviation or enlargement. It is, in fact, a simple interpolation. Nor can the propositions numbered 7 and 8 be accepted as a correct representation of the second and third rules.

"9. That when a neutral fails to use all the means in its power to prevent a breach of the neutrality of its soil or waters, in any of the foregoing respects, the neutral should make compensation for the injury resulting therefrom."

The British government does not admit this proposition as it stands, but it agrees that, where an appreciable injury has been directly caused by a violation of a clearly-ascertained international duty, suitable reparation ought to be made to the injured party.

"10. That this obligation is not discharged or arrested by the change of the offending vessel into a public man-of-war.

"11. That this obligation is not discharged by a fraudulent attempt of the offending vessel to evade the provisions of a local municipal law.

"12. That the offense will not be deposited so as to release the liability of the neutral even by the entry of the offending vessel in a port of the belligerent, and there becoming a man-of-war, if any part of the original fraud continues to hang about the vessel.

Her Majesty's government must observe, with all respect for the Government of the United States, that it can neither admit nor deny propositions to which it finds itself unable to attach a distinct meaning. It is not for the British government to contend that any obligation, either of a government or of an individual, which has not been fulfilled can be discharged by subsequent proceedings, such as are here supposed, of others parties. But if it be meant to suggest that, in any such case, the default of the neutral power is not limited to the acts done or omitted to be done on its part, within its own territory, but is to be deemed a continuing default, or series of defaults, during the whole or some part of the subsequent proceedings of the offending vessel beyond its jurisdiction, the British government must demur altogether to such a doctrine, as unknown to international law and opposed to reason and principle.

ARGUMENT OF THE UNITED STATES.—EFFECT ASCRIBED TO BRITISH LAWS AND REGULATIONS AS INTERPRETATIONS OF INTERNATIONAL LAW.

Effect ascribed to British laws and regulations as interpretations of international law.

The differences which exist between the British government and that of the United States arise partly in the statement of principles, but more in the application of them to facts admitted or proved. The latter government has prefixed to its twelve propositions a lengthened argument, which appears to be designed to prove that, if not true in themselves, they are true against Great Britain; and that, if true in themselves, they ought to be applied against her with exceptional and pecular rigor. This argument appears to the British government to contain errors of the gravest kind.

The source of these errors is manifest. The Government of the United States is not satisfied to rely upon the three rules embodied in the treaty, coupled with the general principles of international law not inconsistent with them, as sufficient to support the claims urged against Great Britain. It desires, therefore, to persuade the arbitrators to apply to the conduct of Great Britain, not the general standard of neutral obligation which, under corresponding circumstances, they would apply to the United States, or to any other power which had accepted those rules, but a stricter and more rigorous standard, drawn from the municipal laws of Great Britain, from administrative acts of the British government, or from declarations of British statesmen.

The positions contended for by the United States are in substance as follows:

1. The municipal laws of Great Britain and the administrative acts of her government are to be regarded as defining as against herself her conception of her international duties. What these laws or acts prohibit, she must be assumed to regard as prohibited by the law of nations, and by that standard she must be tried. In short, where her conception of international duty, thus measured, appears to fall short of the common standard, it is to be disregarded; in every other case it is to be assumed as the measure of what she owes to other nations, though not as the measure of what other nations owe to her.

[7] 2. Independently of this theory, Great Britain is under an international obligation to *execute her municipal laws and enforce her proclamations and ordinances where they are for the advantage of other nations.

3. In the performance of these duties Great Britain is bound to use "due diligence," by which is meant an exercise of active vigilance and an effectual use of all the means within the power of the government.

4. Failing to use this due diligence, Great Britain is bound to make compensation for any injury resulting from such failure.

It is necessary to state these positions clearly, because they are expressed with some vagueness in the Case of the United States.

Such, then, is the general measure of neutral duties which the Government of the United States has adopted, and endeavors to persuade the arbitrators to adopt, in support of its claims against Great Britain.

To state the first of this series of positions is to confute it. If it were a true assumption that the municipal laws of a state, wherever they prohibit acts which may affect the security or interest of other states, must have been founded, not on considerations of policy and expediency, but on conceptions of international obligation, it would nevertheless be impossible to contend, with any show of reason, that, by these conceptions, and not by the general rules of the law of nations, the state was to be judged in any international controversies in which it might become engaged. Such a rule, it is evident, would produce the most fantastic consequences. In place of a common and equal standard of obligation, we should then have a varying and unequal one, varying with the nations to which it was applied and with the notions of duty which they might from time to time entertain. It would be as reasonable to contend that a question between private litigants ought to be decided, not by the law, but by what the defendant had supposed to be the law, provided that the plaintiff could show that the difference was in his own favor.

It is not, however, a true assumption that whatever the laws of a state prohibit in matters affecting the security or interests of other states, it must have held itself bound to prohibit by force of an international obligation. This is a hypothesis as groundless as it is unreasonable; for the primary and immediate object of municipal law is the protection of the security and interests of the state itself and its citizens, and it is clear that, with a view to this object, it may be, and frequently is, expedient to prohibit, in relation to other states, acts not prohibited by the law of nations. The theory of the United States would assume that this never is or can be expedient.

This observation applies with all its force to those municipal laws which are sometimes styled "neutrality laws." Such laws belong to the class which, in the codes of some European nations, are described as having for their object the protection of the internal and external security of the state. Thus, by the penal code of France it is made an offense to levy or enroll soldiers without the authority of the government, and penalties of various degrees of severity are denounced against any persons who, by acts not approved by the government, may have exposed French citizens to reprisals or the state to a declaration of war. These provisions have been adopted in the penal code of the kingdom of Italy, in that of the Netherlands, and by other countries.

The law known in England as the foreign-enlistment act of 1819 belongs to the same class. The considerations on which it is founded are thus stated in the preamble:

> Whereas the enlistment or engagement of His Majesty's subjects to serve in war in foreign service without His Majesty's license, and the fitting out and equipping and arming of vessels by His Majesty's subjects without His Majesty's license, for warlike operations in or against the dominions or territories of any foreign prince, state, or potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons aforesaid, or their subjects, *may be prejudicial to and tend to endanger the peace and welfare of this kingdom*; and whereas the laws in force are not sufficiently effectual for preventing the same: be it therefore enacted, &c.

Laws of this kind serve, among other purposes, that of enabling or assisting the state which enacts them to discharge, when a neutral in war, the duties, and protect the rights, of neutrality, and they may therefore, with perfect propriety, be described as having that object in view. But their main, though not always their sole, purpose is to restrain whatever may tend to imperil the relations of the state with foreign powers; they are framed on those considerations of expediency by which all legislation is governed; and, as they may stop short in some respects of the provisions of international law, so they may transcend them in others.

It has sometimes been argued, indeed, though not with success, that the law of nations should be regarded as furnishing an interpre-
[8] tation of the foreign-enlistment act, *and confining its scope to
acts which can be shown independently to be within the prohibitions of that code.[1] But that the act should, on the contrary, be viewed as extending the prohibitions of the law of nations, was never, to the knowledge of Her Majesty's government, contended by any one, and such an argument would certainly receive no attention from any judicial tribunal.[2]

The Government of the United States has appealed, in support of this erroneous notion, to certain English authorities; and the manner in which it has referred to them cannot be left unnoticed. The following sentence is given as a quotation from a dispatch signed by Earl Russell: "That the foreign-enlistment act is intended in aid of the duties * * of a neutral nation."[1] What were the words of Earl Russell? They were these: "That the foreign-enlistment act, which was intended in aid of the duties *and rights* of a neutral nation, can only be applied," &c. The meaning of the sentence is altered by leaving out two of the most important words. Again, the report of a commission appointed in 1867 to consider the laws of Great Britain "available for the enforcement of neutrality," is thus referred to:

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[1] See the argument of the counsel for the defendants in the Alexandria case, (Appendix to the Case of the United States, vol. v, pp. 183 *et seq.*)

[2] A construction contrary to that which the United States contend for against Great Britain has been placed by the Government of the United States on its own law. In 1841 the then Attorney-General was called upon to advise whether the building in the United States of vessels of war for the government of Mexico, to be employed against Texas, was prohibited by the act of 1818. Mr. Legaré advised (whether rightly or wrongly is not material) that it was so, on the following grounds: "The reasoning on this subject is shortly this: the policy of this country is, and ever has been, perfect neutrality and non-interference in the quarrels of others; but by the law of nations that neutrality may, in the matter of furnishing military supplies, be preserved by the two opposite systems, viz, either by furnishing both parties with perfect impartiality or by furnishing neither. For the former branch of the alternative it is superfluous to cite the language of publicists, which is express, and is doubtless familiar to you. If you sell a ship of war to one of the belligerents, the other has no right to complain, so long as you offer him the same facility. The law of nations allows him, it is true, to confiscate the vessel as contraband of war, if he take her on the high seas; but he has no ground of quarrel with you for furnishing or attempting to furnish it. But, *with a full knowledge of this undoubted right of neutrals, this country has seen fit, with regard to ships of war, to adopt the other branch of the alternative*—less profitable with a view to commerce, but more favorable to the preservation of a state of really pacific feeling within her borders: she has forbidden all furnishing of them under severe penalties. The memorable act of 1794 consecrated this policy at an early period of our Federal history, and that act was only repealed in 1818 to give place to an equally decided expression of the legislative will to the same effect. Whatever may be thought of the spirit and policy of the law, its scope and objects are too clear to be misunderstood; and I am of opinion that the case stated by Mr. Curtis falls fully within the purview of the third section."

Mr. Legaré afterward wrote a further opinion to the same effect, holding that "all trading with a belligerent in ships of war, ready equipped for service, was contrary to the law of the United States." "The accompanying prohibition in the statute of all enlistments in the United States furnishes a strong ground to support this opinion. *Such enlistments (if voluntary) are no more against the law of nations than equipping and furnishing ships;* yet it will not be pretended that any attempt to enlist an American citizen within our borders, however covert and cautious, and wherever the service is to be rendered, or the first step toward it taken, is not utterly prohibited by the act. However popular opinion may have recently changed on so important a subject, this act, like that of 1794, was intended to secure, beyond all risk of violation, the neutral and pacific policy which they consecrate as our fundamental law. The framers of both acts *knew perfectly well that they were denying to our citizens rights which the law of nations allowed them to exercise in good faith for commercial purposes.* They knew the price they were paying for peace, but they were willing to pay it. This act is a proof of it."—(Opinions of Attorneys-General of the United States, vol. iii, pp. 738, 741; Appendix to British Case, vol. v, pp. 360, 363.)

> The tribunal of arbitration will search the whole of that report, and of its various appendixes, in vain to find any indication that that distinguished body imagined, or thought, or believed that the measures which they recommended were not "in full conformity with international obligations." On the contrary, the commissioners say that, so far as they can see, the adoption of the recommendations will bring the municipal law into full conformity with the international obligations. Viewing their acts in the light of their powers and of their instructions, the United States feel themselves justified in asking the tribunal to assume that that eminent body regarded the acts which they proposed to prevent by legislation as forbidden by international law.[2]

What is the passage which the Government of the United States has referred to, but has refrained from extracting? It is this:

> *In making the foregoing recommendations we have not felt ourselves bound to consider whether we were exceeding what could actually be required by international law*, but we are of opinion that, if those recommendations should be adopted, the municipal law of this realm, available for the enforcement of neutrality, will derive increased efficiency, and will, so far as we can see, have been brought into conformity with your Majesty's international obligations.[3]

[9] *Thus by leaving out the words in which the commissioners observe that their recommendations may exceed the requirements of international law, and by using in one sense words which (as the context proves) they employed in another, they are represented as saying the very thing which they expressly guarded themselves from being supposed to say, namely, that all the acts which they proposed to prohibit were, in their judgment, already forbidden by international law.[4]

The Government of the United States further assumes that the same false principle is to be applied not only to laws, but to the proclamations, orders, and regulations issued during a war by neutral nations. These also are to be supposed to prohibit nothing which the government that issues them does not believe to be interdicted by international law.

Her Majesty's government had supposed that the nature of these acts and orders was a thing perfectly well understood by the United States, as it certainly is by maritime nations in general. They are universally understood to be acts done in the free exercise of that right which every sovereign state possesses to regulate the access of belligerent vessels to its ports. They convey no admission whatever that what they enjoin is enjoined, or that what they prohibit is prohibited, by the law of nations. In some cases this may be so; commonly it is not so. But the acts themselves, whether they happen to coincide with rules of international law or not, are voluntary and discretionary. They are done in exercise of a right, not in performance of an obligation.

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[1] Case of the United States, p. 108.

[2] Ibid., p. 176.

[3] See Report of the Commission, p. 5; Appendix to British Case, vol. iii; Appendix to Case of the United States, vol. iv, p. 82.

[4] At page 117 of the Case, the judge of the high court of admiralty (Sir R. J. Phillimore) is cited as having stated (very justly) that the act of 9th August, 1870, has the effect of enabling the British government to fulfill more easily than heretofore that particular class of international obligations which may arise out of the conduct of Her Majesty's subjects toward belligerent foreign states with which Her Majesty is at peace. No doubt it has. This quotation is as irrelevant as those introduced at pp. 118–122, in order to prove that the law of nations has been regarded as forming part of the common law of England, a proposition sometimes stated too largely, but which, correctly understood, has been denied by no one, and in no way assists the argument of the United States.

The foregoing remarks have been drawn from the British government by the attempt made in the Case of the United States to introduce into this controversy an assumption which is clearly erroneous: the assumption, namely, that whatever is or was prohibited by British law or by the orders or proclamations of the British government ought, as against Great Britain, to be held to be prohibited by the law of nations.

Thus it is asserted[1] that all the acts prohibited by the 2d, 5th, 6th, 7th, and 8th sections of the foreign-enlistment act must be held, as against Great Britain, to be acts which a neutral government "ought," or "was bound," not to permit to be done within its jurisdiction, and were violations of the international duties "of a neutral;" that the foreign-enlistment act defines and recognizes the "principles and duties" "obligatory on the nation in its relations with other powers;" that the act of 1870 was "intended, *at least as against the British government*, as a re-enactment of the law of nations;" that the restrictions placed by the British government on the stay of belligerent vessels in its ports are to be regarded as commanded by international law, instead of being, what they really were, regulations issued in the free exercise of the sovereign rights of a neutral power; lastly, that the supposed rules or principles of international law thus extracted from British laws and ordinances may and ought to be applied by the tribunal *against Great Britain*, without being recognized by it as applicable under like circumstances against other neutral nations in general.

Her Britannic Majesty's government declares, on the contrary, in the most explicit manner, that the law to which it has submitted its conduct, and by which it has consented to be tried, is the international law recognized in common by all civilized states, coupled with the three rules embodied in the treaty; that this law is to be gathered, not from British statutes or ordinances, but from the general consent of nations, evidenced by their practice; and that the laws and ordinances of Great Britain herself can be appealed to only for the single purpose of proving that her government was armed with sufficient power to discharge its international duties, and not for the purpose of extending, any more than of restricting, the range of those duties.

ARGUMENT OF THE UNITED STATES.—ALLEGED DUTY OF A GOVERNMENT TO ENFORCE ITS OWN LAWS AND REGULATIONS.

Alleged duty of a government to enforce its own laws and regulations.

At page 211 of its Case, the Government of the United States lays down, as against Great Britain, the general proposition [10] that a neutral is bound to enforce its laws and its *"executive proclamation." It appears to contend for the same proposition at page 108. But, at pages 122, 123, it expressly guards itself against being supposed to admit that Great Britain, against whom this supposed principle is pressed, would herself, if the case were reversed, be entitled to the advantage of it against the United States or against other nations. The arbitrators, therefore, are solicited to assume that Great Britain was bound to enforce her laws and ordinances so far as they were in favor of the United States, with the understanding that the decision is not to imply that any corresponding obligation was, or is, incumbent on the United States or on other powers toward Great Britain.

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[1] Case of United States, pp. 109, 110, 118, 125, 210, 212.

In defense of this extraordinary suggestion it is pleaded that "in 1793, during General Washington's administration, the representative of Great Britain in the United States pointed out to Mr. Jefferson, who was then Secretary of State, acts *which were deemed by His Britannic Majesty's government to be 'breaches of neutrality'* done in 'contravention of the President's proclamation' of neutrality, and he invited the United States to take steps for the repression of such acts and for the restoration of captured prizes," and that "it appears that the United States complied with these requests." It will be seen that the representations then made on the part of this country to the United States were founded on the character of the acts themselves, which were deemed by the British government to be breaches of neutrality, and not upon the fact that they were prohibited by the President's proclamation. Further comment on this supposed precedent, which will hereafter be examined for a different purpose, is here unnecessary.

The international duties which Great Britain acknowledges toward other states she will at all times hold herself entitled to enforce against them. And she would not have expected that, under any circumstances, the United States could have taken a different view.

Disregarding the attempt to confine the operation of it to a single power, Her Majesty's government cannot admit the proposition for which the Government of the United States contends. Setting aside those cases in which the law or ordinance serves only as a means of enabling the government to discharge an antecedent international obligation, and cases in which the omission to enforce it would be an instance of willful partiality or a violation of an express or tacit engagement, it cannot be admitted that a state is bound by any international duty toward other states to execute or enforce its own ordinances or laws within its own territory. A state is bound to enforce the laws which afford protection to life and property, for the benefit of commorant foreigners as well as for that of its own citizens; because it is a principle universally recognized that foreign residents obeying the laws are entitled to the protection which they bestow. Here there is an antecedent duty. But a state is not bound to enforce revenue laws of its own, from which an incidental advantage may be reaped by some foreign nation or its citizens; for here there is no antecedent duty. Still less can it be allowed, in the absence of any antecedent obligation, that in executing its own laws a state is bound, in relation to other states, to the exercise of active vigilance and exact diligence, or that it owes them compensation for any loss they may conceive themselves to have sustained through a default in this respect. The comity of nations, indeed, permits representations and remonstrances to be made by one government to another in cases where no strict right exists. Nor is Her Majesty's government disposed to deny that cases may occur in which, through a reasonable confidence that the laws and ordinances of a particular state would be executed according to their tenor, losses may have been incurred by another state or its citizens or subjects for which some reparation might fairly and equitably be made. But the claim for compensation in such cases arises from special circumstances, and appeals to international comity and an enlarged sense of equity, not to strict right. Great Britain is willing to go as far as any state has ever gone in this direction. The British government has never denied, on the contrary, it has at all times freely and readily admitted, that the United States had reasonable ground to expect that the provisions of the foreign-enlistment act would, like the other municipal laws of Great Britain, be fairly executed, even where they might exceed the ascertained limits of the law of nations. This consideration, and the wish that every cause of complaint on the part of the United States should be completely and effectually removed, together with the desire to make satisfactory provision for the future, induced Her Majesty's government, in concluding the treaty of Washington, to consent that a retrospective effect should be given to the three rules inserted in the VIth Article of that treaty.

RECAPITULATION.

Recapitulation.

The conduct of Great Britain in this matter is to be tried by the three rules of the treaty of Washington, coupled with such [11] general principles of international law, not *inconsistent with those rules, as may appear to have been applicable to the case. The general principles of international law are to be collected from those sources to which it is customary to have recourse, and not from the municipal law of Great Britain, nor from administrative acts or regulations of the British government; and these are to be applied, as against Great Britain, in the same manner in which they would be applied, under like circumstances, against the United States or any other sovereign state.

ARGUMENT OF THE UNITED STATES.—EXTENT OF NEUTRAL OBLIGATIONS, AS DEDUCED FROM THE THREE RULES AND FROM GENERAL PRINCIPLES OF INTERNATIONAL LAW.

Extent of neutral obligations, as deduced from the three rules and from general principles of international law.

Her Britannic Majesty's government proceeds to remark upon that part of the Case of the United States in which the Government of the United States has explained and endeavored to support its view of the extent of the duties of a neutral power.

The British government deems it right here to observe that the questions submitted to the tribunal are not of an abstract or speculative character. The arbitrators have not to consider and determine what rules might with advantage be laid down for the regulation of the conduct of neutral powers during war; what, under such rules, would have been the duty of Great Britain, or whether Great Britain acted in accordance with that standard of duty. They have to deal with facts. Injuries are alleged to have been inflicted by Great Britain and sustained by the United States. Reparation is claimed for those injuries. There can be no injury without some violation of a duty actually existing at the time.[1] The arbitrators, before they decide against Great Britain, must be satisfied that there was such a violation of duty. They must be satisfied, therefore, in the first place, that the alleged duty really existed. They must be satisfied, further, that the violation, if any, was such that reparation may justly be awarded for it in money—that is, that it was the direct cause of some substantial and appreciable loss to the party claiming reparation.

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[1] The general definition of "*culpa*" or "*faute*" applies to international injuries, as well as to injuries inflicted and sustained by individuals. "Le débiteur est en faute soit qu'il contrevient à l'obligation de ne pas faire, soit quand il n'exécute pas obligation de faire, soit quand il n'a pas apporté dans l'exécution ou dans l'accomplissement de cette obligation tous les soins auxquels il était tenu."—*Le Droit civil français, par Zachariæ, annoté par G. Massé et Ch. Vergé, sec.* 548.

The neutral duties which it is alleged by the United States that Great Britain failed to discharge are of two classes, which should be kept distinct from each other. They relate to—

(A.) The original fitting out, arming, or equipping in neutral ports of vessels intended for the naval service of a belligerent, and the original departure from the jurisdiction of the neutral of vessels intended for such service, and adapted for war wholly or in part within such jurisdiction.

(B.) The admission into the ports or waters of a neutral of vessels in the naval service of a belligerent, whether such vessels were or were not originally adapted for war within the jurisdiction of the neutral, and acts done by or in respect of vessels so admitted.

The question what measure of diligence or care may justly be demanded of a neutral government in the prevention of acts on the part of its subjects or citizens which are inconsistent with neutrality, and the question in what cases and on what accounts reparation may justly be awarded, are again distinct from the foregoing, and have to be considered separately.

(A.) ORIGINAL EQUIPMENT, ETC., OF BELLIGERENT VESSELS IN NEUTRAL PORTS.

(A.) Original equipment of belligerent vessels in neutral ports.

As to neutral duties falling under the first of these heads, Her Britannic Majesty's government adheres to what is laid down in the three rules embodied in the sixth article of the treaty, and more particularly in the first of those rules. The British government is well convinced that these rules go beyond any definition of neutral duty, which, up to that time, had been established by the law or general practice of nations; but it refrains from arguing that question, holding that the discussion of it is precluded, except so far as may be necessary for the purpose of dealing with arguments founded on an assumed state of international law, as distinct from an undertaking by Her Majesty to act upon the rules. By common consent the rules are, for the purposes of this arbitration, to be [12] *taken as applicable to the case; it is to be assumed, without dispute on either side, for the purpose of this arbitration, that the obligations which they purport to express were such as Great Britain had undertaken to perform.

Since, however, the Government of the United States has thought proper to enter into the question at some length, Her Majesty's government deems it not improper to repeat here a statement already made in its case presented to the tribunal.

"The case," it was there said, "of a vessel which is dispatched from a neutral port to or for the use of a belligerent, after having been prepared within the neutral territory for warlike use, is one which may be regarded from different points of view and may fall within the operation of different principles. The ship herself may be regarded merely as an implement or engine of war, sold or manufactured to order within neutral territory, and afterward transported therefrom, and the whole transaction as falling within the scope of the principles applicable to the sale, manufacture, shipment, and transportation of articles contraband of war; or, on the other hand, the preparation and dispatch of the ship may be viewed as being really and in effect the preparation and commencement of a hostile expedition. The circumstances of each case can alone determine from which of these two points of view it may most fitly be regarded, and to which class the transaction ought to be assigned. But the difficulty of drawing a clear, precise, and intelligible line between these two classes of transactions has always been considerable in theory and still greater in practice; and it was enhanced to the utmost during the civil war by the ingenuity and audacity of American citizens, who were engaged in carrying on hostilities against the Government of the United States, and were desirous of availing themselves for this purpose of the ship-building and manufacturing resources of Great Britain. This will sufficiently appear from the narrative which follows; and it will be seen also how serious and incessant were the trouble and embarrassment which these enterprises occasioned to Her Majesty's government. It is by the many difficulties encountered and by the experience acquired during the war that Her Majesty's government was finally led to the conclusion that it was expedient, not only to enlarge the scope of its municipal law in relation to this subject beyond what has hitherto been deemed necessary in any other country, but, further, to accept for itself, and propose to other powers, rules of international obligation somewhat more stringent and comprehensive than are to be found in earlier expositions of the law of nations."

The British government believes that the arbitrators would search in vain in text-books of acknowledged authority anterior to the civil war, and in the general practice of maritime nations, for any proof or acknowledgment of a duty incumbent on neutral governments to prevent their citizens or subjects from supplying belligerents with ships adapted for warlike use. They would find it, indeed, asserted, on the one hand, that among the duties of a neutral government is that of preventing hostile expeditions in aid of either belligerent from being organized within and dispatched from its territory. They would not, on the other hand, find the sale or delivery to a belligerent by a citizen or subject of the neutral of a vessel adapted for war classed among the acts which the neutral government is bound to prevent, nor would they find any distinction drawn in this respect between the sale and delivery of a vessel built to order and that of a vessel not built to order.[1]

It is true beyond controversy that, at the time when the events occurred out of which the claims of the United States have arisen, the mere sale and delivery of a vessel adapted for war in a neutral port to a belligerent, and the mere construction of such a vessel to the order and for the use of a belligerent, had not been declared by any authority to be acts which the neutral government was under an obligation to prevent, or which violated any neutral duty. And it must never be forgotten that the obligations of international law are such as have been received and acknowledged by the general consent of nations. No private opinions or theoretical developments of the principles on which they are supposed to rest can ever constitute new international obligations or enlarge the old till they have been themselves generally acknowledged and received. It would seem, indeed, to be inconsistent with neutrality for a neutral power to introduce or admit, during war, innovations on these subjects to the prejudice of either belligerent.

It is true, also, that it was a question at the least of reasonable and serious doubt, whether either of these classes of acts was a contravention of the municipal law of England or would have been a contravention of that of the United States. Simple justice demands that this should be steadily kept in view in determining whether, in any [13] of the cases brought *before the arbitrators, there was, on the part of the British government or any of its subordinate officers, such a defect of promptitude or decision as to amount to culpable negligence. It is material to be borne in mind, in considering what facts were known to the government, what those facts proved or did not prove, and what, upon the facts which were known to it, and on which alone it could act, it was the duty of the government to do.

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[1] Some citations bearing on this question are collected in an annex (A) at the end of this counter case.

It has been already stated to the arbitrators, in the case presented to them on the part of Great Britain, that, in the judgment of Her Majesty's government and its official advisers, the special adaptation of a vessel to warlike use was among the acts prohibited by the foreign-enlistment act, provided there were sufficient proof that she was intended for the service of a belligerent, although the vessel might not be actually armed so as to be capable of immediate employment for war. The provisions of the acts are not, as has been already observed, to be regarded as declaratory of the law of nations. But Her Majesty's government agrees that by the second clause of the first rule it was the intention of the high contracting parties to preclude any question on this point from being raised before the arbitrators, with reference to the words "fitting out, arming, or equipping" in the first clause.

Great Britain does not, on this or any other point, desire to raise or dispute before the arbitrators any doubtful or obscure questions of public law. She desires, on the contrary, that they should be relieved, as far as possible, from the necessity of considering such questions, and she expects from them a fair and just decision on ascertained facts, tried by the application of admitted principles, or of plain and legitimate inferences from admitted principles. She accepts as applicable to the case, and as substantially sufficient for an equitable adjudication on it, the proposition that a neutral government, which has assented to the rules laid down in the sixth article of the treaty, is bound—

> First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable grounds to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.
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> Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.
>
> Thirdly. To exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

She accepts these rules, not with the refinements of meaning and the overstrained rigor of construction which are applied to them in the Case of the United States, but according to their obvious purport, and as they would naturally be understood by persons conversant with the law and practice of nations; and she maintains that the British government did not at any time during the war, in respect of any of the vessels to which the claims of the United States relate, or of any other vessels, fail to use the due diligence which the rules require.

(B.) ADMISSION OF BELLIGERENT VESSELS INTO NEUTRAL PORTS.

(B.) Admission of belligerent vessels into neutral ports.

With respect to the admission of belligerent ships of war into neutral ports, the principles of the law of nations are clearly settled, not only by the general consent of publicists, but by a long and nearly uniform practice.

It is the right of a neutral government, at its absolute discretion, either to refuse admission or to grant it, and extend to the vessels so admitted all the ordinary hospitalities of a friendly port, on such conditions, and subject to such regulations, if any, as the neutral government may think fit to make; provided only that the same facilities be offered to both belligerents indifferently, and that such vessels be not permitted to augment their military force, or increase or renew their supplies of arms or munitions of war, within the neutral territory.

A neutral government is not required by the law or practice of nations to place any restrictions whatever upon the liberty which it accords of purchasing provisions, coal, and other supplies, (not being supplies of arms or munitions of war.) It is not a principle or rule of the law of nations that the supplies purchased should be limited to the quantity necessary for enabling the vessel to gain the nearest port of her own country or of an ally. No such principle was ever, so far as Her Majesty's government is aware, admitted or contended for by any maritime power. On the contrary, it has been the constant [14] practice *to allow belligerent vessels to repair, refit, and supply themselves with stores and fuel, with the avowed intention of continuing to cruise. So also belligerent ships may be either permitted or forbidden, at the pleasure of the neutral, to bring in prizes, to retain possession of them, or even to sell them, although there can be no condemnation of them as prize by any authority locally situate within the neutral territory. Special restrictions may undoubtedly be imposed by the neutral government if it think fit, but they may be revoked at any time, and do not confer any right on either belligerent. All that a belligerent has a right to demand is, that restrictions imposed on him shall be imposed on his enemy likewise.[1]

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[1] These propositions are so familiar that they do not need to be supported by the citation of authorities. The subjoined extracts from some of the most recent writers of note may, however, serve to illustrate them:

"Les règles relatives à l'accès et au séjour momentané des bâtiments dans les ports et dans les rades étrangers restent les mêmes en temps de paix qu'en temps de guerre. Sauf les limitations consenties par traité, les ports, les rades, et les mers territoriales neutres sont un asile ouvert aux bâtiments de guerre des belligérants, surtout lorsqu'ils s'y présentent en nombre limité; ils y sont admis à s'y procurer les vivres nécessaires et à y faire les réparations indispensables pour *reprendre la mer et se livrer de nouveau aux opérations de guerre,* sans que l'état neutre viole par là les devoirs de la neutralité comme il les violerait, au contraire, s'il accordait un traitement semblable à des troupes de terre belligérantes qui viendraient chercher un refuge sur son territoire; en pareil cas celles-ci doivent être désarmées et éloignées du théâtre de la guerre. Cette différence de traitement est attribuée, communément, par les publicistes, ainsi que l'énonce encore un auteur allemand moderne, aux conséquences de l'immunité du pavillon et au principle que les navires de guerre sont une portion du territoire de la nation à laquelle ils appartiennent. Nous aimons mieux en chercher les véritables motifs dans les conditions si différentes de l'existence maritime et dans les nécessités indispensables de la navigation et de la vie des hommes sur un élément aussi terrible parfois que la mer."—*Ortolan: Règles internationales et diplomatie de la mer*, (4th edition, vol. ii, p. 286.)

"Sous la réserve de ces diverses circonstances, l'asile que les navires et les corsaires réguliers des puissances belligérantes sont admis à recevoir dans les portes neutres s'applique aussi à ceux de ces navires qui arrivent avec des prises. Un état neutre n'ayant pas le droit de s'ingérer dans les résultats des actes exercés par un belligérant en conformité de lois de la guerre, du moment que le capteur a hissé le pavillon de l'état auquel il appartient à bord de la prise qu'il a faite, cette prise doit être considérée, provisoirement du moins, comme propriété de cet état ou des sujets; et à ce titre on est fondé à réclamer pour elle l'hospitalité dans les ports amis.

"Cependant il ne faut pas perdre de vue que chaque état, ayant la propriété et la police de ses ports, est libre, en principe, d'en ouvrir et d'en fermer l'entrée, selon qu'il le juge convenable aux intérêts ou à la tranquillité du pays, et que les belligérants ne peuvent, par conséquent, en réclamer l'entrée, pour leurs navires, ni pour les prises qu'ils ont faites, comme un droit qui leur appartiendrait."—*Ibid.*, vol. ii, p. 303.

"Le droit d'asile maritime diffère essentiellement de celui que les neutres peuvent exercer en faveur des belligérants sur le territoire continental. Dans les guerres ter-

[15] *FIRST LIMITATION SUGGESTED BY THE UNITED STATES.

It has been necessary for Her Britannic Majesty's government to recall the attention of the tribunal to these well-known and elementary maxims, because the Government of the United States has not only endeavored to fix upon the regulations and instructions which the British government deemed it expedient to issue during the war to its own officers, a character which they did not possess, that of acknowledg-

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restres lorsqu'une armée, fuyant devant son ennemi, vient se refugier sur un territoire neutre elle y est reçue, il est vrai; elle y trouve tous les secours d'humanité. Mais l'armée est dissoute, les hommes qui la composent sont désarmés et éloignés du théâtre de la guerre; en un mot, on remplit les devoirs d'humanité à l'égard des individus, mais on n'accorde pas l'asile à l'armée pris comme corps. Le neutre qui, au lieu d'agir ainsi que je viens de le dire, accueillerait les troupes ennemies, leur fournirait des vivres, leur donnerait le temps de se remettre de leurs fatigues, de soigner leurs malades et leurs blessés, et leur permettrait ensuite de retourner sur le théâtre des opérations militaires, ne serait pas considéré comme neutre; il manquerait à tous les devoirs de son état. L'asile maritime, au contraire, consiste à recevoir dans les rades fermées, même dans les ports, les bâtiments des belligérants; que leur entrée soit volontaire ou nécessitée par la tempête, par le manque de vivres ou par toute autre cause, même par la poursuite de l'ennemi. Les vaisseaux admis peuvent acheter les vivres qui leur sont nécessaires, réparer les avaries faites, soit par les accidents de mer, soit par le combat, soigner leurs malades ou leurs blessés, *puis sortir librement pour aller livrer de nouveaux combats*. Ils ne sont pas, par conséquent, soumis au désarmement, comme les troupes de terre.

"Galiani et Azuni attribuent cette différence à celle qui existe entre la terre et la mer, entre les dangers qui menacent le marin et ceux auxquels est exposé le soldat. Ce dernier ne peut craindre que la défaite et d'être pris par son ennemi, tandis que le premier peut souvent être exposé à périr sur les mers par la famine, à être englouti sous les flots, &c. Cette cause de différence peut être vraie, mais elle ne suffit pas pour motiver celle qui existe. En effet, si elle était unique, elle ne justifierait nullement l'absence de désarmement, surtout lorsqu'un bâtiment vient se jeter dans le port neutre pour échapper à la poursuite de l'ennemi, lorsqu'il vient y chercher un refuge contre une défaite, contre une prise inévitable. Il est vrai que Galiani propose de soumettre les vaisseaux qui profitent de l'asile au désarmement. Mail il reconnaît que cette règle n'est pas admise par les nations, qu'elle est complétement nouvelle, et que le petit nombre d'exemples, que l'on pourrait citer, de bâtiments contraints à désarmer pour pouvoir être admis à jouir de l'asile du port neutre, s'applique à des armateurs dont la conduite seule motivait cette exigence extraordinaire.

"Azuni va beaucoup plus loin: il veut que toute bâtiment qui entre dans un port neutre, pour se soustraire à la poursuite de l'ennemi, soit tenu non-seulement de désarmer immédiatement, s'il est armé en guerre, mais encore de ne plus naviguer pendant tout le temps de la guerre. Et, d'après la manière absolue dont il s'exprime, il est évident qu'il applique cette règle même aux navires du commerce.

"Il y a donc à cette différence immense une autre cause qu'il est utile de rechercher. Je crois qu'elle est tout entière dans la qualité reconnu du bâtiment. Il est une partie du territoire de son pays; pour tout ce qui concerne son gouvernement intérieur, il est exclusivement placé sous la juridiction de son souverain. Or, il est évident qu'ordonner le désarmement, c'est s'immiscer dans le gouvernement intérieur du vaisseau, c'est faire un acte de juridiction sur le vaisseau; le prince neutre n'a pas le droit de le faire. Il peut refuser l'asile; il peut l'accorder seulement sous certaines conditions, avec des restrictions. S'il veut remplir les devoirs d'humanité, arracher le bâtiment aux périls qui peuvent le menacer, il le reçoit dans ses ports, il lui accorde les secours nécessaires pour le mettre en état de reprendre la mer. Tel est, à mon avis, le seul motif de la différence dont je viens de parler."—*Hautefeuille: Droits et devoirs des nations neutres*, vol. i, p. 347.

"Tambien es costumbre permitir en ellos (puertos neutrales) á los buques armados, públicos y particulares, proveerse de viveres y otros artículos inocentes. Es licito á los beligerantes llevar sus presas á puerto neutral y venderlas en él, si no se lo prohibe el soberano del territorio, á quién es libre conceder este permiso ó rehusarle, observando con ambos beligerantes una conducta igual."—*Pando: Elementos del derecho internacional*, § 192.

Even the prohibition of the purchase of arms and munitions of war by a belligerent vessel in a neutral port has been questioned by Heffter. "Es wäre indessen hart," he says, "einen Krieger wehrlos seinen Feinden Preis zu geben, auch ist Verkauff im eigenen Lande den Neutralen überhaupt nicht verboten."—*Das europäische Völkerrecht*, p. 1st, note 2, (5th edition.)

ments or recognitions of rules obligatory under the law of nations; it has further insisted upon a construction of the words of the second rule, which no neutral nation could safely accept, and which was not in the contemplation of Great Britain at the time when they were agreed to.

The novel limitations which it is attempted thus to introduce are in the following passage, mingled with limitations which at present exist and are recognized by established usage:

> The ports or waters of the neutral are not to be made the base of naval operations by a belligerent. Vessels of war may come and go under such rules and regulations as the neutral may prescribe; food and the ordinary stores and supplies of a ship not of a warlike character may be furnished without question, in quantities necessary for immediate wants; the moderate hospitalities which do not infringe upon impartiality may be extended; but no act shall be done to make the neutral port a base of naval operations. Ammunition and military stores for cruisers cannot be obtained there; coal cannot be stored there for successive supplies to the same vessel, nor can it be furnished or obtained in such supplies. Prizes cannot be brought there for condemnation. The repairs that humanity demand can be given, but no repairs should add to the strength or efficiency of a vessel, beyond what is absolutely necessary to gain the nearest of its own ports. In the same sense are to be taken the clauses relating to the renewal or augmentation of military supplies or arms and the recruitment of men. As the vessel enters the port, so is she to leave it, without addition to her effective power of doing injury to the other belligerent. If her magazine is supplied with powder, shot, or shells; if new guns are added to her armament; if pistols, or muskets, or cutlasses, or other implements of destruction are put on board; if men are recruited; even if, in these days when steam is a power, an excessive supply of coal is put into her bunkers, the neutral will have failed in the performance of its duty.[1]

According to this interpretation a neutral government which should suffer a belligerent cruiser to effect any repairs beyond what are absolutely necessary for gaining the nearest of its own ports, or to receive more coal than would be enough for the same purpose, would commit a breach of neutral duty. It may, indeed, sometimes be found convenient by neutral powers to impose restrictions of this nature, more or less stringent, on the armed vessels of belligerents admitted into their ports; and this was done by Great Britain during the civil war. But such restrictions were not then, and are not now, dictated by any rule of international obligation. Were they to become such, and were the obligation to be construed against the neutral with the breadth and rigor for which the United States contend, it may be feared that neutral powers would rarely be secure against complaints and demands for compensation on the part of one belligerent or another.

Having constantly during the war used British ports as places of resort for its own cruisers, and having repeatedly obtained for them therein successive supplies of coal, which were consumed, not in returning home, but in cruising, the Government of the United States now appears to represent this very act as a breach of neutral duty, and to hold Great Britain liable for any cases in which confederate vessels may have succeeded in obtaining similar facilities.

This question, however, does not regard Great Britain alone. The Government of the United States has plainly declared that it regards these rules as no more than a statement of previously established [16] rules of international law.[2] So far as regards the second rule *Her

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[1] Case of the United States, p. 167.

[2] Case of the United States, pp. 148, 149. See also p. 162, and the President's message to Congress, December 4, 1871. "The contracting parties in the treaty have undertaken to regard as between themselves certain principles of public law, for which the United States have contended from the commencement of their history. They have also agreed to bring those principles to the knowledge of the other maritime powers, and to invite them to accede to them."

Britannic Majesty's government concurs in this view. The expressions upon which the United States rely belong to a class in common use among publicists, who, in attempting to define the duties of neutrality, are accustomed to employ these words or others equivalent to them, and of not less extensive meaning. Thus the phrase "base of naval operations," employed in this connection, denotes the use of neutral territory by a belligerent ship as a station or point of departure, where she may await and from whence she may attack her enemy. That these expressions have not hitherto received the construction which the United States would put upon them is certain. Whether they are to receive it in future is a question which concerns not Great Britain only, but all other powers which may hereafter find themselves neutral in maritime warfare.[1]

FURTHER LIMITATION SUGGESTED BY THE UNITED STATES.

Further limitation suggested by the United States.

The Government of the United States insists further that the general right of neutral powers to allow free entrance into and egress from their ports to belligerent ships of war is subject to one important exception. This exception relates to vessels which have been originally adapted for war wholly or in part within the jurisdiction of the neutral. It is insisted that the neutral government is bound to seize and detain such vessels whenever they may enter its ports; that this is a duty which it owes to the other belligerent, and by the non-performance of which it becomes liable to a demand for compensation.

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[1] A distinction has sometimes been drawn between such hospitalities as humanity requires to be granted to all belligerent vessels and such as the neutral may concede or refuse at discretion. (See the opinion of Mr. Cushing, then Attorney-General of the United States, on the case of the Sitka, Appendix to British Case, vol. v, p. 366.) "Whether or not," says Mr. Cushing, "a neutral nation has the right to refuse absolutely the admission of any belligerent ship into her ports, is an abstract question, which it is unnecessary to discuss here. It suffices to say that the general duties of humanity require that the belligerent be allowed to enter for the purpose of escaping from the danger of the seas, or purchasing provisions and making repairs indispensable to the continuance of the voyage. Everything accorded beyond this must be regarded as an act of international sociability or comity, not of humanity or obligation. * * * In the present state of the law of nations, it is universally conceded that the armed ships of a belligerent, whether men-of-war or private armed cruisers, are to be admitted, with their prizes, into the territorial waters of a neutral for refuge, whether from chase or from the perils of the sea. This is a question of mere temporary asylum, accorded in obedience to the dictates of humanity and to be regulated by the specific exigency.

"Going beyond this, we find that the ships of war of a belligerent are generally admitted into the ports of the neutral, even when there is no exigency of humanity, but still under certain reservations. The neutral nation has a perfect right so to measure the extent of the asylum thus accorded as to cover its own safety and retain the means of enforcing respect for its own sovereignty. Thus, in Europe, it generally happens that war is commenced between two or three of the great powers for purposes of mutual jealousy or ambition of their own, and as to which the other states are comparatively indifferent in feeling or interest, or have conflicting interests, which impel them to remain neutral in the war. But, very soon, as the burden of the war presses on one or another of the belligerents, he, having undertaken more than he can accomplish alone, seeks to persuade or compel the neutral state to join him. Or he cannot efficiently attack his enemy without occupying the territory of some neutral state. Or, perceiving that his own commercial resources are wasting away in the war, he looks resentfully on the prosperity of some neutral state, whose commerce flourishes at his expense. Or, jealous of the intentions of a neutral state, and fearing it may join his enemy, he seeks to anticipate such an event by crippling the military forces of such neutral state. Or, finally, becoming fatally engaged in a protracted war, until it has at length degenerated into a mere willful contest of pride and passion, the belligerent enters upon the desperate and frantic plan of starving his adversary by cutting off all the neutral commerce, the very attempt to do which is an outrage on the law of nations, and can be carried out only by the perpetration of every kind of violence and fraud on the neutral nations." He proceeds to observe that "it is not material whether such regulations operate to the benefit of one or the other belligerent power." The argument of the United States now is, that any hospitalities afforded to belligerent vessels in neutral ports, beyond those which Mr. Cushing described in 1855 as commanded by the dictates of humanity, and obligatory on all neutral powers, are violations of neutral duty.

In the view of the United States this also is a general rule of international law, which existed before the treaty of Washington, binding on all neutral powers, and is expressly affirmed, also, as between the United States and Great Britain, by the first of the three rules.

It is stated as follows:

> A neutral government is bound, first, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use. The United States invite the particular attention of the tribunal to the continuing character of the second clause of this rule. The violation of the first clause takes place once for all when the offending vessel is fitted out, armed, or equipped within the jurisdiction of the neutral; but the offense under the second clause may be committed as often as a vessel, which has at any time been specially adapted, in whole or in part, to warlike use, within the jurisdiction of the neutral, enters and departs
> [17] unmolested from one of its ports. *Every time that the Alabama, or the Georgia,
> or the Florida, or the Shenandoah came within British jurisdiction, and was suffered to depart, there was a renewed offense against the sovereignty of Great Britain and a renewed liability to the United States.[1]

The words "specially adapted for warlike use" include, according to the United States, any adaptation whatever "for the hostile use of a belligerent, whether that adaptation began when the keel was laid to a vessel intended for such hostile use, or whether it was made in later stages of construction, or in fitting out, or in furnishing, or in equipping, or in arming, or in any other way."[2] In every case in which anything whatever had been done, however slight, to fit the vessel for warlike use, (for the language of the United States is framed with studied care to embrace every possible act of adaptation,) the obligation, with its attendant liability, attaches on the neutral government.

This duty seems to have, according to the United States, no limit of time. It applies to vessels which have "at any time" received any partial adaptation for warlike use in the building-yards, docks, or waters of the neutral country; it applies to public ships of war commissioned by a belligerent power; and it applies to them indifferently whether the act or acts of adaptation took place after they were commissioned or before it, and before they came into the possession of the commissioning power. Literally, it might even be taken to apply to cases in which the adaptation had taken place for purposes totally unconnected with the particular war or with either of the belligerents. Had the United States intended to limit in any way their peculiar interpretation of the clause, they might have been expected to state the limitation. But it is clear that they had no such intention, for they have been careful to employ the widest and most comprehensive language they could possibly command.

It can hardly be necessary to say that this pretended obligation, whereby a neutral government would be bound to seize by force any public armed ship which might enter its ports, and of which there might be reason to believe that she had at any time before received some partial adaptation for war within the jurisdiction of the neutral, is entirely unknown to the law, unsupported by practice, and in direct conflict with the principles which have hitherto governed the admission of public ships of war into the ports of friendly nations.

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[1] Case of the United States, p. 163.

[2] Ibid., p. 162.

This would alone be sufficient to condemn the interpretation of the second rule suggested by the United States, even if it could, with any plausibility, be represented as the natural meaning of the words employed. But it is not their natural meaning. No one who desired to lay down such a principle would clothe it in such language. It is clear that these words point to a departure following the special adaptation, while the hostile purpose still rests in intention, and the vessel may still, by due diligence, be prevented from quitting the neutral territory to carry that purpose into execution; and that they could not, without violence, be applied to a case in which the ship, having succeeded in effecting her departure and finally quitted the neutral jurisdiction, has subsequently re-entered it at an indefinite distance of time; when, instead of being merely "intended for warlike use," she is known to be actually engaged in hostile operations, and when her original character has been exchanged for that of a public ship of war, recognized as such in the ports of other neutral states, and exempt as such from all local jurisdiction. Unless a violation of neutrality had been established in due course of law against such a vessel while properly subject to the neutral jurisdiction, the question of fact whether such a violation had taken place could not, by any form of proceeding, be investigated between the neutral power and the belligerent whose flag she bore. Even if the proof of the facts, in *foro competente*, were as easy as it has been generally found difficult, the belligerent power would justly deny the right of the neutral to exercise jurisdiction over a vessel forming part of its public maritime force, for the purpose of any such inquiry. And to detain a public ship of war in a neutral port for acts done before she had obtained that character, without any previous notice that she was not at liberty to come in upon the usual terms, would be in itself an act of war, and a plain violation of well-settled rules of international comity.

Her Britannic Majesty's government observes with sincere regret that, as in other particulars, so more especially in this, the Government of the United States, instead of accepting in a fair and reasonable sense rules which the two powers have engaged to observe toward one another and to recommend for adoption to other states, seems on this occasion to have considered how they might be turned to the greatest advantage in the present controversy, and with that view to have strained the construction of them to the very utmost. The undue extension which it is proposed to give to the first rule does not accord with its plain [18] and natural meaning, was never contemplated *by the government of Her Britannic Majesty, and is altogether rejected by Great Britain.

The British government concurs with the Government of the United States in holding that a vessel which has become liable to arrest and seizure within neutral jurisdiction, by reason of a violation of neutrality, cannot relieve itself from that liability by merely removing to another place within the same jurisdiction, and that the duty of the neutral government to seize and detain, where such a duty exists, would not be affected, though the execution of it might without any want of due diligence be embarrassed or prevented by the mere fact of such removal. The orders issued for the seizure of the Alabama under the powers of the foreign-enlistment act would have been executed at Queenstown or Nassau, had she gone from Liverpool to either of those places, exactly as they would have been executed at Liverpool if they had arrived in time. But the Alabama, when she touched for the first time at a port of a British colony, had for more than six months been commissioned and in active service as a cruiser of the Confederate States; had, as such, fought a successful action with a United States war steamer; and, as such, has been received at the French island of Martinique, as she afterward was at Fernando de Noronha, Bahia, and Cherbourg. And, in matters relating to the war, it was the duty of Great Britain, as it was the duty of other neutral powers, to treat the Alabama in exactly the same manner as, under corresponding circumstances, they would have treated a public ship armed and commissioned by a recognized sovereign state.

Her Majesty's Government, in its Case presented to the tribunal of arbitration, has stated the following propositions:[1]

> Maritime war being carried on by hostilities on the high seas, and through the instrumentality (ordinarily) of vessels commissioned by public authority, a neutral power is bound to recognize, in matters relating to the war, commissions issued by each belligerent and captures made by each, to the same extent and under the same conditions as it recognizes commissions issued and captures made by the other.
>
> Where either belligerent is a community or body of persons not recognized by the neutral power as constituting a sovereign state, commissions issued by such belligerent are recognized as acts emanating, not indeed from a sovereign government, but from a person or persons exercising *de facto*, in relation to the war, the powers of a sovereign government.
>
> Public ships of war in the service of a belligerent, entering the ports or waters of a neutral, are, by the practice of nations, exempt from the jurisdiction of the neutral power. To withdraw or refuse to recognize this exemption without previous notice, or without such notice to exert, or attempt to exert, jurisdiction over any such vessel, would be a violation of a common understanding, which all nations are bound by good faith to respect.
>
> A vessel becomes a public ship of war by being armed and commissioned, that is to say, formally invested by order or under the authority of a government with the character of a ship employed in its naval service and forming part of its marine for purposes of war. There are no general rules which prescribe how, where, or in what form the commissioning must be effected, so as to impress on the vessel the character of a public ship of war. What is essential is, that the appointment of a designated officer to the charge and command of a ship likewise designated be made by the government or the proper department of it, or under authority delegated by the government or department, and that the charge and command of the ship be taken by the officer so appointed. Customarily, a ship is held to be commissioned when a commissioned officer appointed to her has gone on board of her and hoisted the colors appropriated to the military marine. A neutral power may indeed refuse to admit into its own ports or waters as a public ship of war any belligerent vessel not commissioned in a specified form or manner, as it may impose on such admission any other conditions at its pleasure, provided the refusal be applied to both belligerents indifferently; but this should not be done without reasonable notice.
>
> The act of commissioning, by which a ship is invested with the character of a public ship of war, is, for that purpose, valid and conclusive, notwithstanding that the ship may have been at the time registered in a foreign country as a ship of that country, or may have been liable to process at the suit of a private claimant or to arrest or forfeiture under the law of a foreign state. The commissioning power, by commissioning her, incorporates her into its naval force; and by the same act which withdraws her from the operation of ordinary legal process assumes the responsibility for all existing claims which could otherwise have been enforced against her.

[19] *The principle on which these rules repose is thus explained by Ortolan:

> S'il s'agit de navires de guerre, la coutume internationale est constante: ces navires restent régis uniquement par la souveraineté de leurs pays; les lois, les autorités, et les juridictions de l'état dans les eaux duquel ils sont mouillés leur restent étrangères; ils n'ont avec cet état que des relations internationales par la voie des fonctionnaires de la localité compétents pour de pareilles relations.
>
> Cette coutume est-elle fondée en raison? Peut-elle être défendue même au point de vue théorique? Ou bien mérite-t-elle le blâme que quelques esprits paraissent vouloir jeter sur elle, ou les restrictions que d'autres s'efforcent d'y apporter?

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[1] British Case, pp. 4, 23, 24.

> Le navire de guerre portant en son sein une partie de la puissance publique de l'état auquel il appartient, un corps organisé de fonctionnaires et d'agents de cette puissance dans l'ordre administratif et dans l'ordre militaire, soumettre ce navire et le corps organisé qu'il porte aux lois et aux autorités du pays dans les eaux duquel il entre, ce serait vraiment soumettre l'une de ces puissances à l'autre; ce serait vouloir rendre impossibles les relations maritimes d'une nation à l'autre par bâtiments de l'état. Il faut ou renoncer à ces relations ou les admettre avec les conditions indispensables pour maintenir à chaque état souverain son indépendance.
>
> L'état propriétaire du port ou de la rade peut, sans doute, à l'égard des bâtiments de guerre pour lesquels il aurait des motifs de sortir des règles ordinaires et pacifiques du droit des gens, leur interdire l'entrée de ses eaux, les y surveiller s'il croit leur présence dangereuse, ou leur enjoindre d'en sortir, de même qu'il est libre, quand ils sont dans la mer territoriale, d'employer à leur égard les moyens de sûreté que leur voisinage peut rendre nécessaires, sauf à répondre, envers l'état auquel ces vaisseaux appartiennent, de toutes ces mesures qui pourront être, suivant les événements qui les auront motivées ou la manière dont elles auront été exécutées, des actes de défense ou de précaution légitime, ou des actés de méfiance, ou des offenses graves, ou même des causes de guerre; mais tant qu'il les reçoit, il doit respecter en eux la souveraineté étrangère dont ils sont une émanation; il ne peut avoir, par conséquent, la prétention de régir les personnes qui se trouvent et les faits qui se passent à leur bord, ni de faire sur ce bord acte de puissance et de souveraineté.
>
> C'est ainsi que le conflit se trouve sagement réglé et que l'indépendance de chaque état souverain est maintenue.
>
> Les conséquences de cette pratique, que M. Pinheiro-Ferreira relève comme les plus dénuées de raison, savoir, celles relatives à l'asile que les malfaiteurs du pays trouveraient à bord, appartiennent à une matière qui reviendra plus loin, et dont nous traiterons en détail. Mais nous pouvons, dés à présent, faire observer que jamais le commandant d'un navire de guerre n'appliquera le bénéfice de l'exterritorialité de son navire en faveur des malfaiteurs du pays, pas plus que l'ambassadeur l'exterritorialité de son hôtel et de ses équipages; et que, dans le cas où certains criminels seraient parvenus à se réfugier à son bord, il existe des règles internationales relativement à leur expulsion du navire ou à leur extradition.
>
> En un mot, l'inviolabilité qui est due en tous lieux aux navires de guerre comme à une forteresse flottante de l'état qui les a armés, renfermant un corps organisé de la puissance publique de cet état, cette inviolabilité n'entraîne pas l'irrésponsabilité des officiers qui commandent ces navires. Mais tous les actes qui s'y réfèrent, soit de la part de l'état dans les eaux duquel sont mouillés les navires à l'égard de ces navires, soit réciproquement, tous ces actes sont actes de relations internationales, et les conséquences ou réparations, s'il y a lieu, doivent en être poursuivies par voie diplomatique.
>
> Cette inviolabilité ne diminue en rien, du reste, le droit qu'a toute nation, si le navire de guerre vient à commettre contre elle des actes d'aggression, d'hostilité, ou de violence quelconques, de prendre immédiatement toutes les mesures et d'employer tous les moyens nécessaires à une légitime défense.
>
> Elle n'empêche pas non plus que les navires de guerre soient soumis à l'observation des règlements sanitaires du pays où ils veulent aborder. Les épreuves imposés par ces règlements sont des conditions mises à l'admission des navires dans les eaux de ce pays; elles ne sont nullement en contradiction avec le droit d'exterritorialité dont jouissent les bâtiments de guerre entrés dans ces eaux.
>
> Il résulte de tout ce qui précède que, loin de désapprouver, au point de vue de la pure raison, la coutume du droit international positif à l'égard des navires de guerre, il faut tenir cette coutume pour bonne et pour digne d'être maintenue en théorie comme en pratique.[1]

The principle laid down in the preceding extract is clear, and the consequences which flow from it are equally clear. A vessel commissioned as a public ship of war, entering a foreign port, is a portion of the naval force of the government by which she is commissioned, commanded by its officers, and displaying the ensigns of its authority. Any act of force directed against her (unless to prevent or repel aggression, or compel her to depart after having been required to do so by competent authority) would be directed against her government, and would at the same time, if done without previous warning, be an infraction of a recognized understanding, on the faith of which she entered, and on the observance of which she had a right to rely. If, while in neutral waters, she commits any violation of neutrality or other offense against the neutral, force may undoubtedly be employed in any way

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[1] Règles internationales et diplomatie de la mer (4th edition,) vol. i, p. 190.

which may be necessary in order to prevent or arrest the unlawful act and to compel her departure. But redress ought not to be sought against the ship herself; it should be sought, if needful, against her government. *A fortiori*, this is true if the offense were committed before she arrived at the neutral port. Thus, of the violations of neutrality committed during the war, the grossest and most flagrant
[20] by far was that *perpetrated by the Wachusett in the harbor of Bahia. The Brazilian authorities would have been amply justified in firing on that vessel while engaged in the act, and sinking her if necessary. If she had afterward presented herself in a Brazilian port, they would, doubtless, have refused her admission; but they would have rightly abstained, even on such provocation, from seizing and detaining her. *A multo fortiori*, the same proposition holds good if the act complained of were done before the offending ship came into the possession of the commissioning government, or before she was incorporated into its naval service.

These principles are recognized by publicists and sanctioned by usage. There is not a maritime power in the world which would not resent any violation of them; and it would be the duty of any naval officer to resist such a violation, unless it were supported by manifestly superior force. They do not extend to prizes brought into neutral ports by the belligerent vessel, if captured within the waters of the neutral, or by a vessel unlawfully armed within her jurisdiction and during the cruise immediately following such armament. These the neutral may restore, and it may be his duty to do so, on the application of the original owners or their government.

As to the nature of the proof which may be required that a vessel claiming the character of a public ship of war is really such, M. Ortolan observes:

> Les preuves de la nationalité et du caractère d'un bâtiment de guerre sont dans le pavillon et dans la flamme qu'il fait battre à sa corne et au haut de ses mâts; dans l'attestation de son commandant, donnée, au besoin, sur sa parole d'honneur; dans la commission de ce commandant, et dans les ordres qu'il a reçus de son souverain.
>
> Le pavillon et la flamme sont indices visibles; mais, dans certains cas, on n'est tenu d'y ajouter foi que lorsqu'ils ont été appuyés d'un coup de canon. L'attestation du commandant peut être exigible: les autres preuves doivent se présumer; et soit en pleine mer soit ailleurs, aucune puissance étrangère n'a le droit d'en obtenir l'exhibition.

He refers also to the answer returned by the government of the Netherlands to that of the United States respecting the reception of the Sumter at Curaçoa, and to the opinion pronounced, in 1782, by the government of Russia in the matter of the Danish corvette St. John, seized in Spanish waters, notwithstanding the display of her pendant and the declaration of her commanding officer:

> La Russie fut plus explicite. Elle jugea dans sa réponse:
>
> "1. Qu'il est conforme aux principes du droit des gens qu'un bâtiment autorisé, selon les usages de la cour ou de la nation à laquelle il appartient, à porter pavillon militaire, doit être envisagé dès lors comme un bâtiment armé en guerre.
>
> "2. Que ni la forme de ce bâtiment, ni sa destination antérieure, ni le nombre d'individus qui en composent l'équipage, ne peuvent plus altérer en lui cette qualité inhérente, pourvu que l'officier commandant soit de marine militaire."
>
> Il n'existe, que nous sachions, aucun traité, ni aucun acte public dans lesquels ce principe proclamé par la Russie ait été sanctionné depuis; mais il l'est incontestablement par la coutume générale.[1]

The established practice of maritime nations, including the United

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[1] Règles internationales et diplomatie de la mer, (4th edition,) vol. i, pp. 181, 185.

States and Great Britain, accords with the foregoing statements of Ortolan.[1]

[21] ARGUMENT OF THE UNITED STATES.—"WHAT IS DUE DILIGENCE?"

What is due diligence?

Passing from the question, what classes of acts a neutral power is bound to use due diligence to prevent, to the further question, what is due diligence, Her Majesty's government finds that "these words are not regarded by the United States as changing, in any respect, the obligations of a neutral regarding the matters referred to in the rules, as those obligations were imposed by the principles of international law existing before the conclusion of the Treaty."[2] Her Majesty's government concurs with that of the United States in holding that the words "due diligence" introduced no new or additional obligation. They exact from the neutral, in the discharge of the duties imposed on him, that measure of care, and no other, which is required by the ordinary principles of international jurisprudence, and the absence of which constitutes negligence.

Her Majesty's government will not follow the Government of the United States through the observations which it has presented to the arbitrators on the nature and degrees of negligence, but will notice only the definition which, at the close of those observations, it has attempted to supply:

> The United States understand that the diligence which is called for by the rules of the Treaty of Washington is a due diligence; that is, a diligence proportioned to the magnitude of the subject, and to the dignity and strength of the power which is to exercise it; a diligence which shall, by the use of active vigilance, and of all the other means in the power of the neutral, through all stages of the transaction, prevent its soil from being violated; a diligence that shall in like manner deter designing men from committing acts of war upon the soil of the neutral against its will, and thus possibly dragging it into a war which it would avoid; a diligence which prompts the

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[1] The general immunity of public ships of war from any foreign jurisdiction, civil or criminal, is thus stated in a work of acknowledged authority, (Kent's Commentaries on American Law, vol. i, p. 155:) "This right of search is confined to private merchant-vessels, and does not apply to public ships of war. Their immunity from the exercise of any civil or criminal jurisdiction but that of the sovereign power to which they belong is uniformly asserted, claimed, and conceded. A contrary doctrine is not to be found in any jurist or writer on the law of nations, or admitted in any treaty, and every act to the contrary has been promptly met and condemned." So Wheaton, Elements of International Law, p. 151, ed. 1836: "If there be no express prohibition, the ports of a friendly state are considered as open to the public armed and commissioned ships belonging to another nation with whom that state is at peace. Such ships are exempt from the jurisdiction of the local tribunals and authorities, whether they enter the ports under the license implied from the absence of any prohibition, or under an express permission stipulated by treaty." The principle of the rule was laid down by Chief Justice Marshall, delivering the judgment of the Supreme Court of the United States, in the case of the Exchange, a vessel belonging to an American citizen, which had been seized in a Spanish port by the French government and converted into a public ship of war, and which her original owner afterward attempted to reclaim on her arrival at Philadelphia. After observing that private persons entering a foreign country are not exempt from the local jurisdiction, the Chief Justice proceeded: "But the situation of a public ship is in many respects different. She constitutes a part of the military force of her nation, acts under the immediate and direct command of her sovereign, is employed by him in national objects. He has many and powerful motives for preventing those objects from being defeated by the interference of a foreign state. Such interference cannot take place without seriously affecting his power and dignity. The implied license, therefore, under which such vessel enters a friendly port may reasonably be construed, and, it seems to the court, ought to be construed, as containing an exemption from the jurisdiction of the sovereign within whose territory she claims the rites of hospitality." (Cranch's Reports, vol. vii, p. 135.) The rule was also affirmed by Mr. Justice Story, one of the greatest jurists who ever adorned the United States, in the case of the Santissima Trinidad. It is assumed in Mr. Cushing's opinion referred to above, (p. 16,) in the case of the Sitka.

[2] Case of the United States, p. 21.

neutral to the most energetic measures to discover any purpose of doing the acts forbidden by its good faith as a neutral, and imposes upon it the obligation, when it receives the knowledge of an intention to commit such acts, to use all the means in its power to prevent it.[1]

Her Majesty's government has been unable to collect from this definition the information which it is doubtless intended to convey. It may readily be conceded that the care exerted by a government to prevent violations of its neutrality should bear some proportion to the probable consequences of such offenses. It may be conceded also that the responsibility incurred by failing to prevent an offense must materially depend on the power which the government possessed of preventing it. So far as this, the British government concurs with the Government of the United States. But Her Majesty's government cannot admit that the measure of diligence due from neutral powers ought to be proportioned in any way to their relative degrees of dignity; it knows of no distinction between more dignified and less dignified powers; it regards all sovereign states as enjoying equal rights and equally subject to all ordinary international obligations; and it is firmly persuaded that there is no state in Europe or America which would be willing to claim or accept any immunity in this respect on the ground of its inferiority to others in extent, military force, or population. In truth, the arbitrators will have clearly perceived, from this statement already presented to them on the part of Great Britain, that in a country which, with free institutions, possesses a large commercial marine and a very extensive ship-building trade, the difficulty of preventing enterprises of this nature is, instead of being less, far greater than in countries which are not so populous and where these conditions are not united; and just allowance ought to be made for this difficulty. The assertion that due diligence means a diligence which shall prevent the acts in question, and shall deter men from committing them, if taken literally, can only signify that no government can be held to have done its duty which has not been completely successful. Of all the powers in the world, such a test would most severely condemn the Government of the United States. If not taken literally, it can contribute nothing to a serious discussion. It has been shown, by ample evidence, in the case presented on the part of Great Britain, that the measures adopted by the British government did prevent and deter men from enterprises which would have violated or imperiled her neutrality; all that the United States have to complain of is, that these measures proved ineffectual to prevent or deter, in a very small number of cases, in which the agents contrived
[22] to escape observation, *or the difficulty of obtaining evidence
was great. That due diligence requires a government to use all the means in its power, is a proposition true in one sense, false in another: true, if it means that the government is bound to exert honestly and with reasonable care and activity the means at its disposal; false, impracticable, and absurd, if it means that a liability arises whenever it is possible to show that an hour has been lost which might have been gained, or an accidental delay incurred which might, by the utmost foresight, have been prevented; that an expedient which might have succeeded has not been tried; that means of obtaining information which are deemed unworthy or improper have not been resorted to; or that the exertions of an officer or servant of government have not been taxed to the utmost limit of his physical capacity.

Nor can we fail to observe that, in proportion as we extend the duty of prevention incumbent on neutral governments, from hostile enterprises which are open and flagrant to acts of a more doubtful character which border on the line betwixt the lawful and the unlawful, it becomes more and more difficult to exact from the neutral, in the performance of that duty, peculiar and extraordinary vigilance and activity. The duty of preventing the open assembling within neutral territory of an armed hostile expedition against a neighboring country is plain and obvious, and requires only a prompt exercise of adequate force. But it is otherwise when we come to acts of a different class, the criminality of which depends on a latent intention; such, for example, as the mere procuring for belligerent purposes from the yards of a neutral ship-builder, whose ordinary business it is to build ships of all kinds for customers of all nations, a vessel with some special adaptation for war. There is nothing in the relation of a neutral to a belligerent to cast on the former the duty of exercising, within his own territory, a constant and minute espionage over ordinary transactions of commerce for the protection of the latter. This relation, always onerous to the neutral, is, at the same time, it must be remembered, purely involuntary on his part. It is forced on him by the quarrels of his neighbors, in which he has no concern, or by their internal discords, when those discords break out into civil war.

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[1] Case of the United States, p. 158.

Her Majesty's government has not attempted a task which has baffled, as it believes, the ingenuity of jurists of all times and countries—that of defining with any approach to precision, apart from the circumstances of any particular case, what shall be deemed due diligence or reasonable care. In its Case, already presented to the Tribunal, it has stated some general propositions, which it believes to be consonant with justice, and supported by such analogies as may be fairly drawn from the private law of Europe and America.[1] It leaves it, however, to the arbitrators, who know what are the ordinary powers of governments, what the difficulties they labor under, and what may reasonably and wisely be expected from them, to determine, upon a careful consideration of the facts, and on the same principles by which the States to which they themselves belong would be willing to be judged, whether on the part of Great Britain there has or has not been that want of due care or diligence which makes reparation a duty.[2]

On the question, in what cases and within what limits compensation in money may reasonably be deemed due from a neutral nation for injuries occasioned by such a want of care, Her Majesty's government will here only say, that the position of Great Britain appears to be misapprehended by the United States, and that the two decisions of an American court cited in the case have no bearing upon it.[3] Such a question, it is evident, is not within the cognizance of any municipal tribunal, however respectable; and no municipal tribunal has attempted to pronounce judgment on it. The Supreme Court of the United States, in the cases cited, decided only that of two armed vessels one had been unlawfully fitted out, while the other had received an unlawful augmentation of force, within the jurisdiction of the United States, and that prizes taken by each and brought within the jurisdiction of the United States ought to be restored.

The arbitrators will now be in a situation to judge what value to attribute to the assertion, "that the principles for which the United States contend have been recognized by the statesmen, the jurists, the publicists, and the legislators of Great Britain; that they have the approbation of the most eminent authorities upon the continent of Europe; and that they have been regarded by the other powers of Europe in their dealing with each other."[1] The truth is, that the alleged principles from which Her Majesty's govern*ment has declared its [23] dissent were never before seriously asserted, and never admitted or recognized by any power in Europe or America; that they have the support of no publicist of authority; that they are unknown in Great Britain; and were, up to the time when these claims were brought forward, equally unknown in the United States.[2]

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[1] Case of Great Britain, p. 24, propositions 9, 10, 11; and pp. 166, 167.

[2] "Du reste," says a distinguished French jurist, treating of this subject in connection with private law, "du reste, soit qu'il s'agisse d'une obligation de donner ou de faire, la protestation des fautes est, dans la pratique, à peine une question de droit. Le point de fait y est toujours dominant, quand il n'y est pas tout."—Larombière, *Théorie et pratique des obligations*, vol. i, p. 417.

[3] The Santissima Trinidad and the Gran Para. Case of the United States, p. 206.

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[1] Case of the United States, p. 202.

[2] The following extract from Reddie's "Researches in Maritime and International Law," (vol. ii, p. 210,) is apposite to the general question how far neutral governments are bound to interfere actively for the purpose of restraining their subjects from acts falling within the prohibitions of international law. It is an abstract of the views expressed in the "Considérations sur les Droits Réciproques des Puissances Belligérantes et des Puissances Neutres sur Mer," of Tetens, a work which Mr. Reddie describes as "the most free from national bias, and most impartial exposition of the general principles of maritime international law which has appeared in recent times:"

"It is a wise foresight for neutral governments to obviate, during war, as far as possible, all illegal conduct on the part of their subjects, for the double advantage of preserving them from risks, and of preventing the suspicions of belligerents against the traders who sail under neutral flags. The conduct exhibited by several individuals in a neutral nation produces naturally a presumption for or against their fellow-countrymen, which seldom fails to have consequences favorable or unfavorable to the vessels of that nation which the belligerents encounter. There is also a political reason for neutral governments watching their subjects in this respect. They cannot, indeed, manifest more authentically their perfect neutrality than by clear and precise ordinances for their commerce and navigation during war, and by a rigorous police, severely directed against those who contravene them. The more they exert themselves to restrain fraud, the more they are in a state to protect their loyal subjects, and to interpose with success in the cases of just claims made by the latter against the cruisers of the belligerent powers.

"What neutrals, however, may do in this respect does not arise from any right which imposes on them the obligation of maintaining a more special surveillance over their subjects during war than they are in the habit of doing during peace; nor to exercise a more extensive inspection over the legality of their conduct toward belligerents than that which is prescribed by law. In even allowing them to act entirely as they choose, they in no manner infringe the rights of the belligerents, provided they do not pretend otherwise to protect their contraventions. But such indifference may inspire belligerents with unfavorable opinions, which it may be as well to prevent, especially if it be preponderating powers who are at war.

"From neutral governments not being under an obligation to obviate the abuses of their subjects, it follows that belligerents, whatever condescension they may have to expect from them for that purpose, cannot reasonably require them to extend their measures beyond what is in practice in these same neutral countries for preventing frauds being committed on their own customs, and for checking the other deceitful contrivances for evading payment of the revenues of the state. The maximum of precaution, in this case, is to maintain and enforce the observance of neutrality in vessels and cargoes with the same diligence and exactness as are exercised in inquiries and other proceedings relative to taxes, or imposts and customs. He who does as much to prevent a wrong meditated against another as he does for his own protection, satisfies every just and reasonable expectation on the part of that other. Perhaps, however, more might be done, if it were wished, completely to attain the object. In time of war special instructions might be ordered; tribunals of inquiry might be established against the frauds of merchants and ship-owners, and more rigor might be shown in the punishment of their delinquencies. But this cannot be demanded on the one side, and, on the other, it might be difficult to grant it, because there might result from it consequences inconsistent with the general spirit of the prohibitory laws of the state. At least, this care must be left to the neutral governments, to whom alone it belongs to judge what it may be proper for them to do with reference to the circumstances of the war."

[24] # *PART III.

PRECEDENTS APPEALED TO BY THE UNITED STATES.

Precedents appealed to by the United States.

In aid of its view of neutral duties and liabilities, the government of the United States has appealed to several precedents recorded in history. These are—

1. A correspondence which passed between the governments of Spain and Sweden, in 1825, relative to a sale of certain Swedish vessels of war, which the Spanish government suspected of having been bought for the service of Mexico.

2. The correspondence between the British minister and the Government of the United States, in 1793, respecting the depredations practiced on British commerce by privateers under the French flag, fitted out in American ports; the measures adopted in consequence by the Government of the United States; and the treaty of 19th November, 1794.

3. The complaints and claims urged by Spain and Portugal against the United States, on account of like depredations on the subjects and shipping of those two powers, by privateers fitted out within the United States; and the subsequent treaty with Spain of 22d February, 1819.

Some of these transactions have been so insufficiently presented in the Case of the United States that it becomes necessary to recall them, so far as may be necessary to set the facts in their true light. It will then be seen that, far from lending any support to the claims of the United States, they, on the contrary, militate against those claims.

It will be necessary, also, since the Government of the United States has invoked against Great Britain the history of American neutrality, to make some additions to a narrative which would otherwise be very imperfect.

1. Case of the Swedish ships.[1]

Case of the Swedish ships, 1825.

This affair calls for scarcely any remark on the part of Great Britain. It was a sale, by a neutral government, of a ship of the line and two frigates; and there was reason to suspect that the trading firm who had become the nominal purchasers had bought them for the service of the republic of Mexico, then at war with Spain. The contract of sale contained a clause, enabling either party to rescind it on payment of a stipulated sum. The transaction was uncompleted, and still within the power of the Swedish government. The government of Spain remonstrated warmly, and induced the ministers of other powers resident at the Swedish court to support its representations.

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[1] The narrative introduced into the Case of the United States is taken from Cussy's Phases et Causes Célèbres du Droit Maritime, vol. ii, p. 402. There is a better account, containing the official correspondence, (which is wanting in Cussy,) in Martens's Causes Célèbres du Droit des Gens, vol. v, p. 229, ed. 1861.

The government of Sweden insisted on its right to complete the sale. At the end of four months, after much correspondence, the contract was rescinded on the request of the purchasers, who alleged that the vessels had been detained till too late in the year by reason of the recall of certain officers and seamen of the Swedish navy, who had previously obtained leave to enter the merchant service, and were to be employed on board of them. The stipulated payment was excused; and the Swedish government undertook to re-imburse the purchasers for money laid out on the repair and equipment of the ships.

That the government of Sweden was right in not completing the sale, after circumstances of suspicion had been brought to its knowledge by Spain, there can be no doubt. It has always been conceded that a sale by a neutral government to a belligerent, directly or indirectly, of arms or munitions of war, or ships of war, stands on ground quite different from the mere forbearance or omission to prohibit such transactions on the part of private individuals who are its subjects. In the latter case no duty is violated. But a government which sells or furnishes arms, gives or lends money, to a belligerent, becomes to that extent a participant in the war.[1]

[25] * In the case of the Anglo-Chinese flotilla, which has been already stated to the arbitrators, it will have been seen that, under somewhat similar circumstances, Her Britannic Majesty's government did not hesitate to do far more than the government of Sweden. The differences are that the vessels of the flotilla had not been the property of the British government, and had only been officered and manned by its permission; that no circumstances of suspicion had been suggested to the government, but merely an apprehended possibility; that Great Britain acted immediately, without any correspondence or delay; and that the sacrifice she undertook to make amounted, not, as in the Swedish case, to about 60,000 francs, but to above 2,500,000.[2]

Great Britain has certainly nothing to fear from this comparison.

The purchase by Her Majesty's government, at the price of £220,000, of the two iron-clads seized in 1863, has been mentioned in the British Case, and it has been stated (as the fact is) that in agreeing to this purchase the government was mainly actuated by anxiety to prevent by any means in its power, however costly, vessels of so formidable a character, constructed in a British port, from passing, directly or indirectly, into the hands of a belligerent.[3]

The case of the old dispatch-boat Victor, sold out of Her Majesty's navy in 1863, will be hereafter referred to.[4] There were in that case no circumstances to excite suspicion, and no representation was made by the minister of the United States to Her Majesty's government. When it was discovered, however, that this vessel had passed into the hands of a belligerent, and that endeavors had been made to fit her out as a cruiser, orders were immediately given that no more ships should be sold out of the navy during the continuance of the war. This decision was followed in the case of two vessels, (the Reynard and Alacrity,) for which an advantageous offer was made to the admiralty in December, 1863, and which it was desirable to dispose of. "It would be better," Earl Russell wrote, "at the present time not to sell any vessels to private firms, as it is impossible to obtain any sufficient assurance in regard to what might be done with vessels when sold out of the navy."[1]

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[1] See Heffter, cited below, p. 145. This distinction is recognized by all writers. There is reason to believe, however, from facts which have become notorious, that it was overlooked by the American Government during the late war between France and Germany.

[2] Case of Great Britain, p. 47. [3] Ibid., p. 44. [4] Infra, p. 122.

2. VIOLATIONS OF AMERICAN NEUTRALITY IN 1793 AND 1794.

2. Violations of American neutrality in 1793 and 1794.

In the year 1793 the neutrality of the United States was infringed, not only by captures, within their territorial waters, of British vessels by hostile armed ships, but by repeated and successful attempts to fit out privateers for cruising, under the French flag, against Great Britain, then at peace with the United States and at war with France.

It must be here observed that the example of this mode of carrying on maritime war had been set by the United States themselves. The agents who were sent to France in 1776 for the purpose of gaining for the United Colonies the aid and support of that power in their struggle for independence, succeeded in procuring and arming many privateers, which they dispatched from French ports, with orders to cruise against Great Britain, and from which British commerce suffered severely.

It was natural to expect that when, in February, 1793, the French Republic declared war against Great Britain, France in her turn should try to imitate and profit by that example. On the 8th of April, 1793, a French envoy arrived at Charleston; he immediately proceeded to fit out privateers, and four were fitted out, armed, manned, and commissioned within American jurisdiction before the end of the month. These acts were open and undisguised. Houses of rendezvous were opened at Charleston for collecting crews, the vessels were suffered to pass the fort under a written permission from the governor of South Carolina, and there was reasonable ground to believe that, though nominally owned by Frenchmen, they were really the property of American citizens. These vessels afterward brought in prizes, which were condemned by pretended prize courts, held within the jurisdiction of the United States.

Applying to the United States the stringent rule which that power now seeks to apply to Great Britain, the British government might undoubtedly have insisted that these were violations of neutrality which the American Government was bound to prevent; that no imperfections in its municipal law or executive organization could be pleaded in its defense; and that the United States were liable for all the injuries which the failure to prevent them might occasion to Great Britain.

The British minister, however, limited himself to the request that the American Government would "pursue such measures as to its wisdom may appear the best calculated for repressing such practices in future, and for restoring to their rightful owners *any captures which these particular privateers may attempt to bring into the ports of the United States.*"[2]

[26] *In the month of May, one of the privateers unlawfully fitted out at Charleston, (the Citoyen Genêt,) came into the port of Philadelphia, which was the seat of the Government of the United States, bringing a prize. The Citoyen Genêt was not seized or detained by the Government of the United States.

After some correspondence with the French envoy, Mr. Jefferson, then Secretary of State, informed him on the 5th June, 1793, that, in the opinion of the President, "the arming and equipping vessels in the ports of the United States to cruise against nations with which they were at peace was incompatible with the territorial sovereignty of the United States; that it made them instrumental to the annoyance of those nations, and thereby tended to compromise their peace; and that he thought it necessary, as an evidence of good faith to them, as well as a proper reparation to the sovereignty of the country, that the armed vessels of this description should"—not be detained in, but—"depart from the ports of the United States."[1]

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[1] Appendix to British Case, vol. v, p. 201.

[2] Ibid., p. 241.

The British minister was on the same day informed that "the moment it was known, the most energetic orders were sent to every State and port in the Union, to prevent a repetition of the accident," and that persons accused of being participators in the act had been committed for trial. The restitution of the prizes was refused:

> The principal agents in this transaction were French citizens. Being within the United States at the moment a war broke out between their own and another country, they determined to go into its defense; they purchase, arm, and equip a vessel with their own money, man it themselves, receive a regular commission from their nation, depart out of the United States, and then commence hostilities by capturing a vessel. If under these circumstances the commission of the captors was valid, the property, according to the laws of war, was by the capture transferred to them, and it would be an aggression on their nation for the United States to rescue it from them, whether on the high seas or on coming into their ports. If the commission was not valid, and consequently the property not transferred by the laws of war to the captors, then the case would have been cognizable in our courts of admiralty, and the owners might have gone thither for redress. So that on neither supposition would the executive be justifiable in interposing.[2]

The American Government thus refused to take any measures even for the restitution of prizes actually brought into their ports by privateers equipped and commissioned therein. The acts complained of, it was added, could not be imputed to the Government, which could not have known, and therefore could not have prevented them.

The British minister, in reply, (7th June, 1793,) represented that these acts were notorious and unconcealed, and well known to the local authorities. He expressed his concern at the decision at which the Government had arrived, and added:

> For all these reasons, notwithstanding the deference which he shall ever preserve for the sentiments of this Government, the undersigned conceives himself justified in having entertained a confidence that the Government of the United States would not only have repressed this insult offered to its sovereignty, but also that the aggression on the subjects of the Crown of Great Britain would have been repaired by the restitution of vessels thus captured.[3]

At the date of Mr. Jefferson's letter, and for a considerable time afterward, it was a disputed question whether the courts of the United States had jurisdiction to inquire into captures made under the circumstances above mentioned, or to order restitution; and this question remained unsettled until the jurisdiction was affirmed by a judgment of the Supreme Court, delivered on the 18th February, 1794. Owners of vessels unlawfully captured were in the mean time debarred from any redress; and to refuse restitution, unless through the medium of the courts, was to refuse it altogether.

After this a vessel was fitted out and armed as a French privateer in the port of Philadelphia itself, under the name of the Little Democrat. The Government did not seize or detain her; it relied on an expectation that the French envoy would not permit her to sail. She sailed, however, and engaged in depredations on British commerce.

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[1] Report of the Neutrality Law Commissioners, p. 19; Appendix to British Case, vol. iii.

[2] Appendix to British Case, vol. v, p. 242.

[3] Ibid, p. 244.

On the 4th August, 1793, circular instructions were sent to the collectors of customs within the United States, intended, though not exclusively intended, to provide against violations of neutrality. According to these instructions, vessels originally fitted out by either belligerent in ports of the United States were not thenceforth to have asylum in any district of the United States. Any vessel contravening the rules laid down was to be refused a clearance until she should have complied with what the governor of the State might decide in reference to her. Care, however, was to be taken in this not necessarily or unreasonably to embarrass trade or vex any of the parties concerned. In order to guard against contraventions, the condition as to military equipment of every vessel arriving in a port of the United States was to be ascertained by accurate survey made on her arrival and again before her [27] departure; but no attempt was to be made to inspect "any *vessel of war in the immediate service of the government of a foreign nation." A schedule of rules was appended to these instructions; and it is material to observe what these rules permitted and what they prohibited in the ports of the United States, disregarding only some specific limitations which had reference to treaties then existing between the United States and France. They permitted—

1. Equipments of merchant vessels by either belligerent, "purely for the accommodation of them as such."

2. Equipments of vessels of war in the immediate service of the government of either belligerent, which, if done to other vessels, would be of a doubtful nature, as applicable either to commerce or war.

3. Equipments of a like nature done to vessels fitted for merchandise and war, whether with or without commissions.

4. They permitted also armed vessels of either belligerent, which should not have infringed any of its rules, to "engage or enlist their own subjects or citizens, not being inhabitants of the United States."

They prohibited "equipments of vessels in the ports of the United States which are of a nature solely adapted for war."[1]

Any kind of equipment, therefore, which might be applicable either to war or to commerce, was declared lawful, whether done to a vessel fitted for war and commerce, or to a vessel actually commissioned as a public ship of war. The only question was as to the nature of the equipment. If it was of such a character as to be applicable solely and exclusively to war, it was forbidden; if not, it was not forbidden.

These rules have always been referred to with approval and respect by American writers on international law.

Notwithstanding the instructions, privateers continued to be fitted out in American ports, and privateers which had been previously fitted out appear to have been suffered to enter, refit, and depart unmolested. Thus, on the 29th December, 1793, the British minister, Mr. Hammond, wrote to Mr. Jefferson:

> The danger to be apprehended from these last-mentioned vessels (privateers illegally fitted out in ports of the United States) still continues to exist to a very alarming degree; since, notwithstanding the repeated assurances I have received from the Federal Government of its determination to exclude those privateers from any future asylum in its ports, and the sincerity of its desire to enforce this determination, I have reason to infer that, in other quarters, means have been successfully devised either to elude its vigilance, or to render nugatory its injunctions. This inference arises from the information I have received—that the privateer Le Citoyen Genêt, fitted out at Charleston, was, on the 21st of August, permitted to return to the port of Philadelphia for the second time, to remain there some days, and then to proceed to sea for the pur-

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[1] Appendix to British Case, vol. v, pp. 269, 270.

pose of commencing new depredations, which, as it appears from the public prints, she is now prosecuting in the adjacent seas; that Le Petit Democrat, and La Carmagnole, both fitted out in the Delaware, were permitted to enter the port of New York, and to continue therein unmolested during a great part of the months of August, September, and October last; that the latter vessel is still in that port, and that the former, having sailed from thence in company with the French fleet, under the charge of Admiral Sercy, and having separated from it at sea, proceeded first to Boston, and afterward returned for a second time to New York, wherein she at present remains.[1]

On the 5th November, 1794, he wrote to Lord Grenville:

In conformity to the intention expressed in my dispatch No. 31, I have now the honor of transmitting to your lordship a list, compiled from returns sent to me by His Majesty's consuls, of such British vessels as have been brought as prizes into ports of the United States, since the commencement of the present hostilities to the beginning of the month of August. On this list it is proper for me to remark, that the value of a considerable proportion of the British vessels captured, and of their cargoes, is omitted in the consular returns; that of those of which the value is mentioned, though it be much underrated, the amount is £195,548 sterling; and that of seventy-five British prizes, forty-six were made by privateers fitted out in ports of the United States.

The depredations of these last-mentioned vessels, which seemed to have been in some measure suspended by the appearance of a British naval force in these seas, have, by recent accounts from Charleston, recommenced. I likewise learn from Baltimore that several vessels are now arming in that port, for the purpose of proceeding to Port de Paix, in Saint Domingo, or to Guadaloupe, and of there procuring French commissions. Though, by an act passed in the last session of Congress, this be a punishable offense, the difficulty of obtaining legal proof of the intention of the persons arming such vessels is a sufficient objection to the institution of any judicial proceedings thereon; and it is useless to address any complaints upon subjects of this nature to the General Government, since the investigation of them is commonly committed to the governors of the respective States, of whom a great majority is so hostile to Great Britain as readily to connive at measures the execution of which may be injurious to her interests.[2]

The British vice-consul at Charleston wrote as follows, on the 28th November, 1794, to the consul, (who was then absent on leave:)

[28] *Notwithstanding the laws of the United States are so guarded against any breach of neutrality, the French here evade them, and arm as many privateers as ever. Yesterday I acquainted the collector of the Federal customs in this port, who is directed by the Secretary of the Treasury to inspect all vessels in this place, and see that none of them in any way whatever commit a breach of the laws—

That the brig Cygnet, fitted for war in this harbor, but afterward permitted to clear out as a merchantman, having been disarmed and her ports nailed up, had her guns sent after her in the privateer L'Ami de la Pointe à Petre, took them on board off this bar, mounted them, knocked out her ports, and proceeded to sea, fully equipped as a privateer.

That the schooner St. Joseph Sugna cleared for Port au Paix as a Spanish prize; had no guns mounted when she dropped down to the port, nor any appearance in her hull of having been fitted for war, although her rigging had every apparent mark of the privateer; had previously to her going over the bar her quarter-deck off, port-holes cut, and guns mounted.

That there was a brigantine fitting at Gaillard's wharf, which came in from Port au Paix, pierced for twelve guns, with a high quarter-deck, the bulk-head of which was cut away, and beams laid level with the main deck, which, from every appearance, is meant to proceed in the same manner the above schooner did, by cutting away the old quarter-deck after she drops down, and getting her guns sent after her.

That a new prize schooner, called the Swallow, was fitting in same manner, and a Providence sloop, with many vessels of a larger size, among which is the old Delaware frigate that was sold after the peace, and fitted for a South Sea whaler. Also, a sloop lying on the stream, with a large quantity of gunpowder on board, supposed to be for the purpose of supplying the privateers.[3]

The Cygnet cleared for Port au Paix with a trifling cargo, there got a commission, and on her return made several prizes, which she sent into Charleston, and of which the local court refused to decree restitution.

The dispatches of the British consuls at Charleston and elsewhere in

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[1] Appendix to British Case, vol. v, p. 266.

[2] Ibid., p. 296.

[3] Ibid., p. 284.

1794, 1795, and some subsequent years, repeatedly refer to privateers fitting out or increasing their armament in ports of the United States, the difficulty of obtaining evidence against them, and the absence of effectual means of repression. Thus the consul at New York, on the 30th November, 1795, after a complaint of a privateer (the Coquette) fitted out in New York, which had taken four prizes, writes:

> When such vessels are fitted out in America in a secret manner, it is difficult to procure proof against them, and I apprehend the law prohibiting the practice is not adequate to the purpose, nor is it enforced with sufficient activity.[1]

And, on the 27th April, 1796, the vice-consul at Charleston wrote:

> Inclosed you will, however, receive the state of them. (the proceedings in prize causes before the Supreme Court,) as handed me by His Majesty's chargé d'affaires in Philadelphia, from which it would appear nothing but the ownership being in American citizens will cause a restoration of prizes, and that the law of the 5th June, 1794, passed in Congress, as well as the general law of nations, so far as respects the arming, equipping, augmenting, or altering the ships of war or privateers of any power at war in neutral ports, are entirely set aside in the courts of this country. Indeed, Mr. Chase, one of the Federal judges, gave it as his opinion that the citizens of the United States had a right to build and equip ships of war as an article of trade, and to dispose of them to either of the belligerent powers without any breach of their neutrality, provided none of those were in any manner concerned in them after they became cruisers.[2]

It has thus been seen that privateers were fitted out, armed, and commissioned in American ports. These privateers committed considerable depredations on British shipping, and took many prizes. Let us now see what was done as to the restitution of the prizes, and compensation for the injuries thus sustained by Great Britain.

The final judgment of the American Government as to what was right to be done in this matter was conveyed in a letter which Mr. Jefferson addressed to the British minister, dated 5th September, 1793. The substance of this letter was, that the Government recognized an obligation to restore prizes *actually brought into its ports* after the 5th June, 1793, if captured by privateers which had been unlawfully fitted out within its jurisdiction, or to use all the means in its power to do so. If, in any case, it had forborne or should forbear to do this, it would hold itself bound to make compensation to the owners.[3] It recognized no other obligation. We shall presently see how this engagement was understood.

The promise or engagement contained in this letter was expressly confined to prizes brought in after the 5th June, 1793. The line of distinction thus drawn, though intelligible as between the United States and France, because this was the date of Mr. Jefferson's prohibitory letter to M. Genêt, was, so far as the rights of Great Britain were concerned, purely arbitrary, the prizes brought in before that date being as unlawful, according to the law of nations, as those brought in [29] after it, and the right to restitution or compensation being *precisely the same. The American Government, however, refused to make either restitution or compensation for prizes brought in previous to the time at which the resolution that they were to be treated as illegal was formed and made known to the French envoy.

The British minister as to this wrote as follows, on the 7th June, 1794, to the then Secretary of State, Mr. Randolph:

> From the same paper, it is also evident that I have never acquiesced in the propriety of the determination of this Government not to restore vessels captured previously to the 5th of June, as well for the reasons which I have there stated, as because I have never perfectly comprehended the principles which could legalize the prizes antece-

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[1] Appendix to British Case, vol. v. p. 292.

[2] Ibid., p. 294.

[3] Ibid., p. 255.

dently to that period, and invalidate those which were made subsequently to it. The list of those prizes annexed to the memorial will evince that (whatever may have been conceived by some) their value was not inconsiderable; but even if their amount had been less considerable, the question in a national point of view could not have been affected by that circumstance.[1]

It may, perhaps, be supposed that the owners of these vessels, though they did not obtain restitution, would be awarded compensation under Article VII of the treaty of 1794. But it will presently be seen that this was refused to them.

The cases in which the Government had "forborne" to make restitution were those of three British merchant-ships which had been captured by privateers unlawfully fitted out, and brought by the captors into American ports after the 5th June, 1793, but which the Government, from motives of policy, was unwilling to take forcibly out of the captors' hands. No provision having been made by Congress for the compensation promised in the case of these three vessels, the owners of these and of a fourth, which was admitted to stand on the same ground, had no other resource than to carry their claims before the commissioners afterward appointed, which they accordingly did.

Decisions of the commissioners under the VIIth Article of the Treaty of 1794.

By the seventh article of the treaty of 19th November, 1794, after a recital that certain British subjects complained "that, in the course of the war, they have sustained loss and damage by reason of the capture of their vessels and merchandise, taken within the limits and jurisdiction of the States and brought into the ports of the same, or taken by vessels originally armed in ports of the said States," it was agreed that, "in all such cases where restitution should not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, September 5, 1793, (a copy of which was annexed to the treaty,") the complaints should be referred to commissioners, who were empowered to award compensation.

Various claims were made before the commissioners so appointed. Three leading decisions pronounced by them will be found in the appendix to this Counter Case. By these decisions it was ruled—

1. That, according to the true construction of Article VII of the treaty, coupled with Mr. Jefferson's letter, no claim could be made on account of a capture *made before the 5th June*, 1793. Hence compensation was refused in the case of a British vessel which had been captured on the 8th May by the Sans Culottes, a privateer fitted out at Charleston, and had been openly brought by her captors into the port of Philadelphia.[2]

2. That no compensation could be claimed for captures made by vessels illegally fitted out within the jurisdiction of the United States *unless the prizes had been subsequently brought into an American port.* The own-

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[1] Appendix to British Case, vol. v, p. 276.

[2] "All the documents above quoted were of the date of 1793, the latest of them of November 22. They were all public, and in the hands of the negotiators of the present treaty. That treaty, which was signed in November, 1794, makes the letter of September, 1793, the standard of the engagements of the United States in cases of this nature, and directs us, in all cases where restitution shall not have been made agreeably to the tenor of that letter, to proceed as in the other cases committed to us. The tenor of that letter appears to me to respect only cases occurring after the 5th June, and contains no stipulation either of restitution or compensation in cases anterior to that date. The case of the Fanny, Pile, master, now under consideration, is of anterior date, and therefore is, in my opinion, not within the powers or duty of this board further to consider."—Decision in the case of the Fanny, Pile, master. Appendix to British Case, vol. v, p. 319.

ers, therefore, of a vessel which the captors had destroyed at sea were entitled to no compensation.[1]

3. That where the prize had been brought in, no compensation could be claimed if the claimant had not taken proceedings in a district court of admiralty, and proved his case there by sufficient testimony, or if there had been any negligence or any delay in instituting or carrying on such proceedings, or in enforcing a judgment if obtained.[2]

[30] *The real effect, then, of the engagement entered into by the Government of the United States as to restitution or compensation, appears to have been this. The owner of a vessel captured by a ship which had offended within American waters against the prohibitions of the United States Government, was at liberty to obtain, if he could, by proceedings in a court of admiralty, a decree for restitution, and the Government undertook in that case either to use all the means in its power to enforce the decree should it be resisted, or else to indemnify him for the loss.[3] If he could not obtain a decree, he had no redress;

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[1] Decision in the case of the Jamaica, Martin, master. Ibid., pp. 311 *et seq.*

[2] "From this examination of the letter, which is given to us for a rule, it results that it was the opinion of the President, therein expressed, that it was incumbent on the United States to make restitution of, or compensation for, all such vessels and property belonging to British subjects as should have been—first, captured between the dates of June 5 and August 7 within the line of jurisdictional protection of the United States, or even on the high seas; if, secondly, such captured vessel and property were brought into the ports of the United States; and, thirdly, provided that, in cases of capture on the high seas, this responsibility should be limited to captures made by vessels armed within their ports; and, fourthly, that the obligation of compensation should extend only to captures made before the 7th August, in which the United States had confessedly forborne to use all the means in their power to procure restitution; and that, with respect to cases of captures made under the first, second, and third circumstances above enumerated, but brought in after the 7th August, the President had determined that all the means in the power of the United States should be used for their restitution, and that he thought that compensation would be equally incumbent on the United States in such of these cases (if any such should at any future time occur) where the United States, having decreed restitution, and the captors having opposed or refused to comply with or submit to such decree, the United States should forbear to carry the same into effect by force.

"Such was the promise. In what manner was that promise to be carried into effect? It was not absolute to restore, by the hand of power, in all cases where complaint should be made; if it had been such, there would have been no want of complaints, and France herself would have had a better reason for making them than any other party. No, the promise was conditional. We will restore in all those cases of complaint where it shall be established by sufficient testimony that the facts are true which form the basis of our promise—that is, that the property claimed belongs to British subjects; that it was taken either within the line of jurisdictional protection, or, if on the high seas, then by some vessel illegally armed in our ports; and that the property so taken has been brought within our ports. By whom were these facts to be proved? According to every principle of reason, justice, or equity, it belongs to him who claims the benefit of a promise to prove that he is the person in whose favor, or under the circumstances in which the promise was intended to operate; and since it is the party promising redress who must first be convinced by testimony of the truths and justice of the complaint before the obligation of his promise can apply and bind him to performance of the stipulated relief, he is, of course, the proper person to decide under what forms, and in what manner, the examination and proof of these facts is to be conducted. Accordingly, every civilized nation has established laws and judicial forms for doing right, for redressing wrongs, and for restoring to the true owner property which may have been unjustly wrested from him."—Decision in the case of the Elizabeth, Ross, master. Appendix to British case, vol. v, p. 322.

[3] "It appears that by the expression 'all the means in their power,' they meant, first, those means which the Constitution and laws had provided for the redress of wrong and force whenever it should be rendered necessary by any act of opposition to the ordinary course of justice. That although doubts entertained by a part of the judicial establishment of its jurisdiction in these cases had placed them for a time under the immediate eye of the Executive power, yet to the complainant this produced no important change, since the same examination and proof of facts was required to establish the justice of his complaint and to guide the decision of the President, as would

if the means used by the Government proved ineffectual, he had likewise no redress.[1] He was equally without redress if his vessel had been plundered or destroyed at sea and not brought into an American port. If the capture was made before a certain date arbitrarily fixed, then, although the prize had been brought within the jurisdiction of the United States, the Government would do nothing to secure him either restitution or indemnity.

This is one of the two precedents on which the United States rely as establishing the proposition "that when a neutral fails to use all the means in its power to prevent a breach of the neutrality of its soil or waters in any of the foregoing respects, the neutral should make compensation for the injury resulting therefrom,"[2] and as justifying the claims it now makes against Great Britain. What the other is we shall see presently.

Let us now observe the terms in which this transaction has been represented to the arbitrators:

> The Government of General Washington determined, however, as it had been informed of these attempts at violating the sovereignty of the nation, that it was the duty of the United States not only to repress them in future, but to restore prizes that might be captured by vessels thus illegally fitted out, manned, equipped, or commissioned within the waters of the United States, or, if unable to restore them, then to make compensation for them.[3]
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> From this examination it appears * * that the United States undertook to make compensation for the injuries resulting from violations that had taken place where they had failed to exert all the means in their power to prevent them. It [31] was subsequently *agreed between the two governments that in cases where restitution of the prizes should be impossible, the amount of the losses should be ascertained by a method similar to that provided by the treaty of Washington, and that a money payment should be made by the United States to Great Britain in lieu of restitution.[4]
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> The United States are aware that some eminent English publicists, writing on the subject of the Alabama claims, have maintained that the obligation in such case to make compensation would not necessarily follow the proof of the commission of the wrong; but the United States confidently insist that such a result is entirely inconsistent with the course pursued by Great Britain and the United States during the administration of General Washington, when Great Britain claimed of the United States compensation for losses sustained from the acts of cruisers that had received warlike additions in the ports of the United States, and the United States admitted the justice of the claim and paid the compensation demanded.[5]

Her Majesty's government deems itself entitled to ask whether these are correct representations of the facts stated in the foregoing pages.

One of the vessels equipped and armed for warlike use within the territory of the United States was, after leaving it, commissioned as a public ship of war of the French Republic, under the name of the Cassius. The subsequent history of the ship has been often referred to in argument, and may be briefly noticed here.

The Cassius had sailed from the Delaware River in January, 1795,

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have been required before the judges. That after the 18th February, 1794, the decision of the Supreme Court had removed those doubts which had for a time influenced the conduct of some of the inferior courts. And it does not appear that after that decision there was any delay on the part of the inferior courts in rendering, nor any opposition on the part of the captors to the execution of their process or decrees, insomuch that there existed no occasion thereafter to fulfill the ultimatum of the promise by exerting force to compel restitution."—The Elizabeth. Ibid., p. 327.

[1] "It appears from the first part of this inquiry that, in promising to use all the means in their power for the restitution of vessels captured after that date, the United States did not undertake to make compensation in case those means should fail of their effect."—The Elizabeth. Ibid., p. 327.

[2] Case of the United States, p. 212.

[3] Ibid., p. 130.

[4] Ibid., p. 131.

[5] Ibid., p. 136.

Case of the Cassius.

after an order to seize her had been issued, avoiding detention partly by artifice, and partly by threatening an armed resistance to the United States authorities. She went to Saint Domingo, was there formally transferred to the French government, and commissioned under the command of an American officer. She returned in August to Philadelphia. While she was in that port proceedings were instituted against her and her commander by the owners of an American vessel which had been captured by her at sea, and condemned by a French prize-court. The owners alleged that the capture was illegal, and claimed damages. The subsequent proceedings and correspondence are too long for recital, and may be read in well-known books.[1] It is sufficient to mention:

1. That the French minister laid claim to the ship as a public ship of war, and refused to be a party to any proceedings in the local courts, or to admit in any way their jurisdiction. He refused also to furnish any proof of her alleged transfer to his government, or of her character as a public ship, beyond his own declaration, given to the Executive as an act of courtesy, that she had been so commissioned at a certain date.

2. That the Government of the United States, while affirming, as an unquestioned fact, (which had been incidentally proved on the trial of a person concerned in it,) that the Cassius had been armed and equipped within the United States, in violation of their neutrality, did not claim any right to seize and detain her, but, on the contrary, instructed its law-officer to present to the court a "suggestion" (as it was technically called) that, as a public ship, she ought to be released as exempt from civil proceedings, and her commander discharged.

3. That, on the release of the ship, the French minister was informed by the Secretary of State that she was ready to be delivered to his order.

The French minister, however, who had previously ordered her to be disarmed, refused to receive her, and she lay unclaimed for two years, at the end of which she was sold for a trifling sum by order of the Government, after a prior notification to the French consul-general, who had answered that his government had given him no authority in the matter.

3. VIOLATIONS OF AMERICAN NEUTRALITY DURING THE WAR CARRIED ON BY SPAIN AND PORTUGAL AGAINST THE SPANISH-AMERICAN COLONIES.

3. Violation of American neutrality during the war carried on by Spain and Portugal against the American colonies.

During this war the ports of the United States were again used, and on a still larger scale, for fitting out privateers against nations with which the Republic was at peace. The vessels so fitted out were numerous, and they appear to have been for the most part owned, as well as commanded and manned, by citizens of the United States. The object of these ventures was plunder; the men employed in them were under little or no discipline or control; and they sometimes degenerated into actual piracy, from which, indeed, they do not seem to have been far removed. On
[32] more than one occasion the courts of the United *States had to
determine whether the captain and crew of the so-called privateer had been engaged in a *bona-fide* exercise of the *jus belli*, though under a commission obtained from an unrecognized government, or were, under

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[1] A statement of the facts of this case will be found in a note by Mr. Dana in the Appendix to the Case of the United States, vol. vii, pp. 18-23.

the color of such a commission, mere robbers on the high seas; and, more than once, persons so tried were condemned to suffer death as pirates.[1]

Correspondence between the United States and Portugal.

Repeated and earnest remonstrances on this subject were, during several years, addressed to the Government of the United States by the ministers of Spain and Portugal. The complaints of Portugal extended over four years, from 1816 to 1820. An abstract of them will be found in a dispatch addressed by Earl Russell to Mr. Adams, and dated 30th August, 1865.[2] The Portuguese minister was repeatedly told, in answer, that the Government of the United States could only exercise the powers with which it was invested by the law; and he was told that, before prosecutions could be instituted, a list of the persons chargeable should be furnished, together with evidence to support the charges. This correspondence has been referred to, but very inaccurately, in the Case of the United States. Thus, a note of the 8th March, 1818, addressed by the Portuguese minister to Mr. J. Q. Adams, the Secretary of State, is mentioned with the following comment:[3] "The note making this complaint contained neither proof of the allegations in the note as to the fitting out of the vessels in the United States, as to their being manned with Americans, nor indications from which the United States could have discovered those facts for themselves." The note in question, which was very short, contained the following passage: "An extract of the documents that prove these facts I have the honor of inclosing in the annexed paper. The documents themselves are at your disposition when required."[4] But Mr. Adams did not ask for the documents. He contented himself with answering:

> The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by captures, over which the United States have neither control nor jurisdiction. For such events no nation can, in principle, nor does in practice, hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.
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> The documents to which you refer must, of course, be *ex parte* statements, which in Portugal or in Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are courts of admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners, should it also be brought within our jurisdiction, and found, upon judicial inquiry, to have been taken in the manner represented by your letter. By the universal laws of nations, the obligations of the American Government extend no further.[5]

"The United States," wrote Mr. Adams on the 30th September, 1820, "had repressed every intended violation" of neutral duties "which had been brought before their courts, *and substantiated by testimony conformable to principles recognized by all tribunals of similar jurisdiction.*"[6] They had also enacted more stringent laws. But it had been represented by

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[1] See United States *vs.* Klintock, 5 Wheaton, 144; United States *vs.* Smith, ibid., 153; United States *vs.* Furlong, ibid., 184; United States *vs.* Jones, 3 Washington's C. C., 209; and the case of the officers and crew of the Irresistible, 18 Niles's Register, 256, 275.

[2] Appendix to British Case, vol. iv, No. 5, correspondence respecting the Shenandoah, p. 25. Appendix to Case of the United States, vol. iii, pp. 553 *et seq.*

[3] Case of the United States, p. 139.

[4] Appendix to British Case, vol. iii, p. 149.

[5] Ibid., p. 150.

[6] Ibid., p. 158.

Portugal that, in spite of these newly enacted laws, the acts complained of continued to be "both frequent and notorious;" it was affirmed that the officers of the Government were "lukewarm;" that notorious as the offenses were, it was difficult to obtain the evidence which was required; and the multitude of persons interested, directly or indirectly, in privateering, interposed great obstacles in the way of a prosecution. In a note addressed to Mr. Adams on the 23d November, 1819, by M. Corréa de Serra, the grievances of Portugal were recapitulated as follows:

> I have the honor of submitting to you the following facts and considerations:
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> During more than two years I have been obliged by my duty to oppose the systematic and organized depredations daily committed on the property of Portuguese subjects by people living in the United States, and with ships fitted in ports of [33] the Union, to the ruin of the commerce of Portugal. I do justice *to, and am grateful for, the proceedings of the Executive, in order to put a stop to these depredations, but the evil is rather increasing. I can present to you, if required, a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which have been taken by these people during the period of full peace. This is not the whole loss we have sustained, this list comprehending only those captures of which I have received official complaints. The victims have been many more, besides violations of territory by landing and plundering ashore, with shocking circumstances.
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> One city alone on this coast has armed twenty-six ships which prey on our vitals, and a week ago three armed ships of this nature were in that port waiting for a favorable occasion of sailing for a cruise. Certainly, the people who commit these excesses are not the United States, but nevertheless they live in the United States, and employ against us the resources which this situation allows them. It is impossible to view them otherwise than a wide-extended and powerful tribe of infidels, worse still than those of North Africa. The North Africans make prizes with leave of their government according to their laws and after a declaration of war; but these worse infidels, of whom I speak, make prizes from nations friendly to the United States, against the will of the Government of the United States, and in spite of the laws of the United States. They are more powerful than the African infidels, because the whole coast of Barbary does not possess such a strength of privateers. They are numerous and widely scattered, not only at sea for action, but ashore likewise to keep their ground against the obvious and plain sense of your laws, since most generally, wherever they have been called to the law, they have found abettors who have helped them to evade the laws by formalities.
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> I shall not tire you with the numerous instances of these facts, but it may be easily conceived how I am heartily sick of receiving frequent communications of Portuguese property stolen, of delinquents inconceivably acquitted, letters from Portuguese merchants deeply injured in their fortunes, and seeing me (as often has been the case) oppressed by prayers for bread from Portuguese sailors, thrown penniless on the shores after their ships had been captured.[1]

In the Case of the United States, the minister who writes thus earnestly and vehemently is represented as "attaching little or no importance to the matter."[2] The reason given is, that he adds that he has chosen the moment to make a visit to Brazil. But, in the sentences which precede and follow, and of which no notice is taken in the Case of the United States, he has explained why he chose to leave his post at that particular time, namely, that until, by amendment of the law, or otherwise, the proper means should be found for putting an end to this "monstrous conspiracy," he found by experience that complaints were useless, and should refrain from continuing to present them without positive orders.[3]

Portugal asked (16th July, 1820) for the appointment of a joint commission; but this was refused by the United States. "The appointment of commissioners," it was replied, "to confer and agree with the ministers of Her Most Faithful Majesty upon the subject to which your letter refers, would not be consistent either with the Constitution of the United States nor with any practice usual among civilized nations. The judicial power of the United States is, by their Constitution, vested in their Supreme Court, and in tribunals subordinate to the same. The judges of these tribunals are amenable to their country by impeachment, and if any Portuguese subject has suffered wrong by any act of any citizen of the United States within their jurisdiction, it is before these tribunals that the remedy is to be sought and obtained. For any acts of citizens of the United States committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible."[1]

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[1] Appendix to British Case, vol. iii, p. 155.

[2] Case of the United States, p. 143.

[3] At p. 146 of the Case of the United States, Earl Russell is accused of having purposely omitted, in his correspondence with Mr. Adams, to notice the promises made by the American Government, that persons offending against the laws should be prosecuted. On the contrary he expressly mentioned this promise. (See Appendix to Case of the United States, vol. v, p. 558.) Again, at pp. 142, 146, he is represented as approving, assuming, assenting to, all the arguments which he had simply recounted as having been ineffectually urged in the former controversy by Portugal.

In 1850, the proposal for a commission to investigate these claims was renewed by Portugal. The Portuguese minister then took notice that captures of Portuguese vessels by privateers, fitted out and equipped in ports of the United States, had continued to be made down to the year 1828; that upward of sixty had been captured or plundered, and that the fitting out of these privateers at Baltimore had been a matter of public notoriety. He added, in the same dispatch, the following statements:

> The undersigned begs leave to say, and he submits, that it was the duty of the United States Government to exercise a reasonable degree of diligence to prevent these proceedings of its citizens, and that, having failed to do so, a just claim exists on the part of the government of Portugal in behalf of its despoiled subjects, against the United States, for the amount of losses sustained by reason thereof.
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> M. de Figanière would here recall to the honorable Mr. Webster's attention the state of the negotiations between the two governments on this subject. So early [34] as the year 1816 the Chevalier *Corréa de Serra, His Most Faithful Majesty's plenipotentiary, apprised Mr. James Monroe, the then Secretary of State, of these illegal armaments in Baltimore. In March, 1818, that minister claimed indemnification by the Government of the United States for the losses sustained by Portuguese subjects from the captures made by the said privateers, to which application the Secretary of State, in a note dated the 14th of said March, replied that "the Executive having used all its power to prevent the arming of vessels in its ports against nations with whom it was at peace, and having put into execution the acts of Congress for keeping neutrality, it could not consider itself obliged to indemnify foreign individuals for losses arising from captures upon which the United States had neither command nor jurisdiction."
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> The undersigned willingly admits that if the Executive of the United States had used all its power to prevent the arming of vessels within its territory, and their sailing from its ports against the commerce of Portugal, no claim could have been set up by or in behalf of Portuguese subjects against the Government of the United States, but that the only remedy would have been against the wrong-doers, in the courts of law of the United States. But, in point of fact, the fitting-out of these privateers was so notorious that, by due diligence on the part of the Government and the officers of the United States, the evil might have been prevented.
>
> It appears to the undersigned that the only question to be examined is, whether the Government of the United States could, by the exercise of a reasonable degree of diligence, have prevented its citizens from going out of its ports in armed vessels, to cruise against the commerce of Portugal, a friendly nation with which the United States had ever been at peace, and had uninterrupted commercial relations.
>
> The undersigned respectfully states that the captures in question were made by American citizens, in vessels fitting out in ports of the United States, and that the fitting out of these vessels, he verily believes, was "not checked by all the means in the power of the Government," but that there was a "neglect of the necessary means of suppressing" those expeditions.
>
> The public notoriety of these expeditions is easily shown. A reference to Niles's Register, and other organs of public information published in those times, will suffice for this purpose; and nothing was more generally known at Baltimore than that these expeditions were commonly fitted out at that port. Indeed, privateers were not only equipped in Baltimore, but they were accustomed to bring their captures there for

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[1] Appendix to British Case, vol. iii, p. 157.

> sale. The Government of the United States might, by the exercise of due diligence, have become acquainted with the facts, and prevented the privateers from sallying forth.
>
> The authorities of the State of Maryland were evidently negligent in permitting these warlike preparations in the port of Baltimore, and as no claim can be made by Portugal against that State, all complaints founded upon the negligence of the State authorities must, of course, be made against the Government of the United States, and this Government is, therefore, as the undersigned conceives, liable for that neglect.[1]

To this dispatch no answer appears to have been made. The Government of the United States had reiterated its refusal to refer the claims to a commission, objecting that they were "obsolete."[2] It was, however, at the same time, pressing against Portugal a claim for compensation on account of an American privateer, destroyed in the port of Fayal in 1814—a claim, therefore, which was of still earlier date than those of Portugal, and was afterward referred to arbitration and rejected.

Correspondence between the United States and Spain.

The complaints and expostulations of the Spanish minister, Don Luis de Onis, were still more frequent and more vehement than those of the minister of Portugal; but the substance of them was the same. The notoriety of the acts complained of, the openness with which they were done, the toleration of them by the authorities, the refusals of the collectors of customs to act on evidence within their reach,[3] the difficulty which the Spanish consuls experienced in obtaining any testimony against unlawful speculations in which so many persons were interested, were strongly and repeatedly insisted on. These grievances were finally summed up in a note addressed to Mr. J. Q. Adams on the 16th of November, 1818, in the course of the negotiations for the treaty of the succeeding year:

> Whatever may be the forecast, wisdom, and justice conspicuous in the laws of the United States, it is universally notorious that a system of pillage and aggression has been organized in several ports of the Union against the vessels and property of the Spanish nation; and it is equally so that all the legal suits hitherto instituted by His Catholic Majesty's consuls, in the courts of their respective districts, for its prevention or the recovery of the property when brought into this country, have been, and still are, completely unavailing. The artifices and evasions by means of which the letter of the law has on these occasions been constantly eluded, are sufficiently known, and even the combination of interests in persons who are well known, among whom are some holding public offices. With a view to afford you and the President more
> [35] complete demonstration of the abuses, aggressions, and piracies *alluded to, I
> inclose you correct lists, extracted from authentic documents deposited in the archives of this legation, exhibiting the number of privateers, or pirates, fitted out in the United States against Spain, and of the prizes brought by them into the ports of the Union, as well as of those sent to other ports, together with the result of the claims made by the Spanish consuls in the courts of this country. Among them you will find the case of two armed ships, the Horatio and Curiazo, built at New York, and detained by His Majesty's consul there, on the ground of their having on board thirty pieces of cannon concealed, with their carriages, and a crew of 160 men. On which occasion it was pretended that it could not be proved that these guns were not an article of commerce, and they finally put to sea without them, the extraordinary number of officers and crew passing for passengers. The number of privateers, or pirates, fitted out and protected in the ports of this republic, as well as of the Spanish prizes made by them, far exceeds that contained in the within lists, but I only lay before your Government those of which I have certain and satisfactory proofs. The right of Spain to an adequate indemnity for all the spoliations committed by these privateers, or pirates, on the Crown and subjects of His Catholic Majesty, is undeniable; but I now submit it to your Government only to point out the extreme necessity of putting an end to these continued acts

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[1] Appendix to British Case, vol. iii, pp. 165, 166.

[2] Mr. Clayton to Senhor de Figanière e Morão, March 30, 1850.—Appendix to British Case, vol. iii, p. 163.

[3] An instructive specimen will be found in the correspondence which accompanies the note of Don Luis de Onis to Mr. J. Q. Adams, of November 2, 1817, (see Appendix to the British Case, vol. iii, p. 118.) It does not appear that any answer was returned by the Secretary of State to this application.

> of hostility and depredation, and of cutting short these enormous and flagrant abuses and evils, by the adoption of such effectual precautions and remedies as will put it out of the power of cupidity or ingenuity to defeat or elude them. In vain should we endeavor amicably to settle and accommodate all existing differences, and thus establish peace and good understanding between the two nations, if the practice of these abuses, and the course of these hostilities and piracies on the commerce and navigation of Spain should, as heretofore, continue uninterrupted in the United States. From the tenor of the documents now inclosed, and of the reflections suggested by the very nature and state of things, the President cannot hesitate to assent to my proposal on this subject; and, as the Congress is now in session, I feel assured that the proper opportunity is afforded for the adoption of the necessary measures I have alluded to, and which I solicit as an essential basis of securing and maintaining a mutual friendship and good understanding between the two nations.[1]

The list of privateers fitted out in American ports, which was inclosed in the above note, included twenty-eight vessels of different classes.

Her Majesty's government may be permitted here to recall the definition of due diligence presented to the arbitrators in the Case of the United States:

> The United States understand that the diligence which is called for by the rules of the treaty of Washington is a due diligence; that is, a diligence proportioned to the magnitude of the subject, and to the dignity and strength of the power which is to exercise it; a diligence which shall, by the use of active vigilance, and of all the other means in the power of a neutral, through all stages of the transaction, prevent its soil from being violated; a diligence that shall, in like manner, deter designing men from committing acts of war upon the soil of the neutral against its will, and thus possibly dragging it into a war which it would avoid; a diligence which prompts the neutral to the most energetic measures to discover any purpose of doing the acts forbidden by its good faith as a neutral, and imposes upon it the obligation, when it receives the knowledge of an intention to commit such acts, to use all the means in its power to prevent it. No diligence short of this would be due; that is, commensurate with the emergency, or with the magnitude of the results of negligence.[2]

The British government may be permitted to express their belief that if this definition had been contended for in 1818 by Spain and Portugal, it would have been deemed by the Government of the United States to require much qualification.

It is alleged in the Case of the United States[3] that, by the treaty of the 22d February, 1819, compensation was made by the United States to Spain for injuries similar to those which they assert that they have sustained from Great Britain. No compensation was paid to Spain. The Government of the United States appears to confound a reciprocal renunciation, in mass, of disputed claims not ascertained, and not admitted to be valid, with a payment, by set-off, of claims the validity of which is disputed on neither side. By Article IX of that treaty, for the purpose of putting an end to all differences between the two powers, each agreed to renounce all claims upon the other, the renunciation including, on one side, "all claims of citizens of the United States upon the government of Spain arising from unlawful seizures at sea, and in the ports and territories of Spain or the Spanish colonies;" and, on the other, all like claims of Spanish subjects upon the Government of the United States. On neither side was there an admission that the claims of the other were valid. On the part of the Government of the United States there was certainly no admission that it had been guilty of negligence. On the contrary, when, in the preceding negotiations, the Spanish government had asked that the American Government should pledge itself to take some measures [36] in order to remedy "the abuses *which, contrary to the law of nations, and contrary to what is expressly stipulated in the treaty of 1795, daily occur in some ports of the Union, in consequence of the vague and arbitrary interpretation which it seems the measures until now adopted are susceptible of, and by means of which the law is eluded"—in short, to amend its neutrality law—the refusal of the American Government was conveyed in these terms: "Of the many complaints which you have addressed to this Government in relation to alleged transactions in our ports, the deficiency has been, not in the meaning or interpretation of the treaty, but in the proof of the facts which you have stated, or which have been reported to you, to bring the cases of complaint within the scope of the stipulations of the treaty."[1] The complaint was, that many acts had been committed which were violations of international law as well as of the treaty. The answer was, that no sufficient proof had been given of these violations. It may be observed that the claims of the United States against Spain were founded on complaints very different, and apparently of very inferior force, to those urged by Spain against the United States. It may be further remarked that the treaty of 27th October, 1795, here referred to, contained, with other provisions for the protection of Spanish commerce, an agreement that no citizen or inhabitant of the United States should apply for or take any commission or letters of marque for arming any ship to act as a privateer against Spanish subjects or their property, from any state at war with Spain, and that any person doing this should be punished as a pirate. The obligations of the United States to Spain did not rest alone on the general principles of international law, but on the express stipulations of a treaty.

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[1] Appendix to British Case, vol. iii, p. 131.

[2] Case of the United States, p. 158.

[3] Pages 136 and 213.

4. LATER VIOLATIONS OF THE AMERICAN NEUTRALITY LAWS.

Later violations of the American neutrality laws.

As the United States have appealed to their history as illustrating their conception of neutral duties, and of the measure of diligence which those duties require, it is necessary to refer to some later passages in that history, showing the impunity with which armed expeditions have been repeatedly, and with little or no attempt at concealment, organized within the United States, and dispatched thence against the territories of friendly nations.

Filibustering expeditions.

The expeditions to which Her Majesty's government desire more particularly to call the attention of the arbitrators are:

The filibustering attacks under Lopez upon Cuba;

Those under Walker upon Mexico and Central America;

The Fenian raids upon Canada.

EXPEDITIONS OF LOPEZ AGAINST CUBA.

The facts with regard to the expeditions undertaken against Cuba by Lopez from the United States are as follows:

Against Cuba, 1850.

On the 11th August, 1849, the President of the United States issued a proclamation stating that "there is reason to believe that an armed expedition is about to be fitted out in the United States, with an intention to invade the island of Cuba or some of the provinces of Mexico," and that "the best information which the Executive has been able to obtain points to the island of Cuba as the object of this expedition;" and calling upon "every officer of this Government, civil or military, to use all efforts in his power to arrest, for trial and punishment, every such offender against the laws providing for the performance of our sacred obligations to friendly powers."

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[1] Don Luis de Onis to Mr. J. Q. Adams, October 24, 1818, (appendix to British Case, vol. iii, p. 129;) Mr. J. Q. Adams to Don Luis de Onis, October 31, 1818, (ibid., vol. iii, p. 130.)

Lopez's first expedition, 1850.

The Spanish adventurer, Lopez, whose preparations for a marauding invasion of Cuba, with a view to its annexation to the United States, had given rise to this proclamation, continued them undeterred. On the 7th May, 1850, he left New Orleans in a steamer with about 500 men, accompanied by two other vessels, and, on the 17th, landed at Cardenas, a small town on the northwest side of the island. Lopez occupied the town, but shortly afterward troops arrived from Havana, and he was compelled to re-embark, and escaped to the United States.

On the 27th May Lopez was arrested; but, no delay being granted by the district judge to procure evidence against him, he was discharged, amid the cheers of a large crowd.

On the 15th July, forty-two of the persons who had been engaged with him in the attempted invasion, and who had been taken prisoners, were liberated by the Spanish authorities, and were taken to Pensacola by the United States ship Albany.

[37] *On the 21st July the grand jury at New Orleans found a true bill against Lopez and fifteen others, for violating the act of 1818. The American Government, however, failed in making out its case against one or two of the parties, and finally abandoned the prosecution.[1]

No sooner was Lopez at liberty, than he set to work to organize another expedition, of which an account is given by the President of the United States in his message to Congress of the 2d of December, 1851:

> Since the close of the last Congress, certain Cubans and other foreigners resident in the United States, who were more or less concerned in the previous invasion of Cuba, instead of being discouraged by its failure, have again abused the hospitality of this country by making it the scene of the equipment of another military expedition against that possession of Her Catholic Majesty, in which they were countenanced, aided, and joined by citizens of the United States. * * * Very early in the morning of the 3d of August a steamer, called the Pampero, departed from New Orleans for Cuba, having on board upward of 400 armed men, with evident intentions to make war upon the authorities of the island. This expedition was set on foot in the palpable violation of the laws of the United States. Its leader was a Spaniard, and several of the chief officers, and some others engaged in it, were foreigners. The persons composing it, however, were mostly citizens of the United States. * * * The steamer in which they embarked left New Orleans stealthily and without a clearance. After touching at Key West, she proceeded to the coast of Cuba, and on the night between the 11th and 12th of August landed the persons on board at Playtas, within about twenty leagues of Havana. The main body of them proceeded to, and took possession of, an inland village, six leagues distant, leaving others to follow in charge of the baggage, as soon as the means of transportation could be obtained. The latter having taken up their line of march to connect themselves with the main body, and having proceeded about four leagues into the country, were attacked, on the morning of the 13th, by a body of Spanish troops, and a bloody conflict ensued; after which they retreated to the place of disembarkation, where about fifty of them obtained boats and re-embarked therein. They were, however, intercepted among the keys near the shore by a Spanish steamer cruising on the coast, captured, and carried to Havana, and after being examined before a military court, were sentenced to be publicly executed, and the sentence was carried into effect on the 16th of August. * * * According to the record of the examination, the prisoners all admitted the offenses charged against them, of being hostile invaders of the island. At the time of their trial and execution the main body of the invaders was still in the field, making war upon the Spanish authorities and Spanish subjects. After the lapse of some days, being overcome by the Spanish troops, they dispersed on the 24th of August; Lopez, their leader, was captured some days after, and executed on the 1st of September. Many of his remaining followers were killed, or died of hunger and fatigue, and the rest were made prisoners.

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[1] Appendix to British Case, vol. iii. Report of Neutrality Commission, p. 34.

But what gives a peculiar criminality to this invasion of Cuba is, that under the lead of Spanish subjects, and with the aid of citizens of the United States, it had its origin, with many, in motives of cupidity. Money was advanced by individuals, probably in considerable amounts, to purchase Cuban bonds, as they have been called, issued by Lopez, sold, doubtless, at a very large discount, and for the payment of which the public lands and public property of Cuba, of whatever kind, and the fiscal resources of the people and government of that island, from whatever source to be derived, were pledged, as well as the good faith of the government expected to be established. All these means of payment, it is evident, were only to be obtained by a process of bloodshed, war, and revolution. None will deny that those who set on foot military expeditions against foreign states by means like these are far more culpable than the ignorant and the necessitous whom they induce to go forth as the ostensible parties in the proceeding. These originators of the invasion of Cuba seem to have determined, with coolness and system, upon an undertaking which should disgrace their country, violate its laws, and put to hazard the lives of ill-informed and deluded men. You will consider whether future legislation be necessary to prevent the perpetration of such offenses in future.

WALKER'S EXPEDITIONS AGAINST MEXICO AND CENTRAL AMERICA.

The spirit of reckless adventure which the Government of the United States had been unable to repress in 1851 and 1852 found vent in the following year in another direction.

Walker's expeditions against Mexico and Central America, 1853, 1855, 1857, 1858, 1859, and 1860.

The leader of the new enterprise was a citizen of the United States named Walker, who put himself at the head of a band of "filibusters," as they were termed, and determined on the conquest of the Mexican possessions in Lower California.

Against Mexico, 1853.

The attempt was made in October, 1853, by an expedition from San Francisco. The filibusters seized the town of La Paz, killed seven of its defenders, and wounded others, and committed various excesses. They were re-enforced by another expedition, which sailed in the Anita from San Francisco in December, but were eventually driven out of the country.

The disturbed state of Central America made it the next tempting prey, and schemes were openly planned in the United States by so-called "transit" and "emigration" companies, for taking forcible possession of it. Walker was again put in command, and sailed from San Francisco on the 4th of May, 1855, with his filibusters. He arrived at Realejo on the 15th of June, and, after various adventures, during which he assumed the [38] *title of President of Nicaragua, and was recognized in that capacity by the United States representative, he was surrounded at Rivas by the native forces in May, 1857. Through the mediation of the commander of the United States ship of war Saint Mary's, he was allowed to surrender unmolested, and to be conveyed away on board that vessel, with the remnant of his followers.

On reaching the United States, he began to recruit for a fresh expedition, and his preparations became so notorious as to call for the following circular to the district attorneys and marshals from General Cass, the United States Secretary of State:

DEPARTMENT OF STATE,
Washington, September 18, 1857.

Circular requiring the local authorities to use *due diligence* to prevent these expeditions.

From information received at this Department, there is reason to believe that lawless persons are now engaged, within the limits of the United States, in setting on foot and preparing the means for military expeditions to be carried on against the territories of Mexico, Nicaragua, and Costa Rica, republics with whom the United States are at peace, in direct violation of the sixth section of the act of Congress approved 20th April, 1818; and under the eighth section of the said act it is made lawful for the President, or such other persons as he shall empower, to employ the land or naval forces of the United States, and the militia thereof, "for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States."

I am, therefore, directed by the President to call your attention to the subject, and to urge you to use all *due diligence*, and to avail yourself of all legitimate means at your command, to enforce these and all other provisions of the said act of 20th April, 1818, against those who may be found to be engaged in setting on foot or preparing military expeditions against the territories of Mexico, Costa Rica, and of Nicaragua, so manifestly prejudicial to the national character, and so injurious to the national interests.

And you are also hereby instructed promptly to communicate to this Department the earliest information you may receive relative to such expeditions.

In October, 1857, Lord Napier, Her Majesty's minister at Washington, warned General Cass that he had been informed that more than 2,000 men had been enrolled for the invasion of Central America, funds had been subscribed to the amount of $250,000, arms had been purchased, and overtures were being made to proprietors of shipping for the transport of the force to the scene of action.[1]

1857.

On the 10th of November, Walker was arrested at New Orleans on a charge of violating the neutrality laws of the United States. He was held to bail in $2,000 (about £400) to appear on the 11th for examination, and he went to sea on the following morning. He embarked, with 300 unarmed followers, in the passage-boat from New Orleans to Mobile, and in Mobile Bay the party were met by a small steamer named the Hicks, and were by it transferred to the Fashion, a river vessel of greater capacity, with about fifty recruits, who joined them from the city of Mobile. The United States Government telegraphed to the Federal authorities at New Orleans to hire a steamer for the pursuit of the expedition, and empowered them also to use the steam revenue-cutter (if there was one on the station) for the purpose. Lord Napier asked General Cass whether any armed steam-vessel of the national navy had been ordered to proceed on this duty, and was told in reply that there was no such vessel at the disposal of the administration. Walker succeeded in effecting a landing for his band, who occupied Fort Castillo, but was himself intercepted by the commodore in command of a United States squadron, and taken to Aspinwall in a ship of war, whence he returned to the United States. It does not, however, appear that any legal proceedings were taken against him for his open defiance of the law. If so, they could not have been very efficacious, as he set to work to prepare for another expedition on a larger scale, and, in May, 1858, the Presidents of Nicaragua and Costa Rica appealed to the protection of international law and of France, England, and Sardinia in an official decree:

1858.

RIVAS, *le* 1er *mai* 1858.

Nous, présidents des deux républiques de Nicaragua et de Costa Rica:

Filibustering expedition against Central America.

Considérant qu'une nouvelle invasion de flibustiers américains menace de nouveau l'Amérique Centrale au préjudice de toutes les lois divines et humaines:

Considérant que l'Amérique Centrale, épuisée par trois ans de guerre, est dans l'impuissance de se défendre sans le concours de l'Europe;

Considérant qu'une délibération commencée des deux gouvernements de Nicaragua et Costa Rica, a mis solennellement les deux républiques sous la protection de la France, de l'Angleterre et de la Sardaigne;

Considérant, enfin, que le péril est imminent, et qu'il est urgent de la conjurer sans attendre l'effet des mesures que ces trois puissances protectrices jugeront à propos de prendre:

Donnons pleins pouvoirs à M. Félix Belly de réclamer en notre nom le concours immédiat de tous les bâtiments de guerre européens qu'il pourra rencontrer;

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[1] Correspondence respecting Central America, Presented to Parliament 1860. Lord Napier to General Cass, October 9, 1857.

> [39] *Le chargeons spécialement de solliciter l'envoi à San Juan del Norte d'un ou de deux bâtiments de la station française des Antilles;
>
> Et mettons les deux républiques de Costa Rica et de Nicaragua et l'Amérique Centrale toute entière sous la garantie du droit des gens européens, et de la législation spéciale édictée contre les pirates et les boucaniers.

Lord Napier, in the note to General Cass, previously referred to, had commented on the ruinous consequences to those nations of the filibustering attacks to which they were exposed from the United States.

"It is obvious," he said, "that the most comprehensive reconciliation of Costa Rica and Nicaragua, accompanied by the re-establishment of the transit service by a respectable company, under the auspices of the United States or England, or both, would still be inoperative for the welfare of those countries if they should continue to labor under apprehensions of invasion. It is superfluous to enlarge upon the calamities which the states in question have experienced from civil war and foreign adventurers. Of the native population not less than 40,000 are computed to have perished in the conflicts of the last two years, while more than 6,000 strangers have sacrificed their lives in the prosecution of criminal or visionary aims. The destruction of property, the suspension of industry, the sacrifice of civilization, virtue, and happiness, the diffusion of wrong and suffering incidental to such a struggle, are more easily imagined than described."

General Cass, in a note to Mr. Lamar, the representative of the United States in Central America, dated the 25th of July, 1858, defended the action of the Government and its officers:

> That unlawful warlike enterprises have been carried on from the United States, composed of persons from different countries, against the territory of Nicaragua, is not to be denied. But during the whole progress of these illegal efforts, the Government of this country has faithfully performed the duty imposed upon it by the laws, as well through public proclamations against such enterprises as by giving the necessary directions to the proper officers to prevent their organization and departure, as by invoking the action of the judicial tribunals, and also by the employment of its naval force.
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> It is unnecessary to support these assertions by detailed proofs. They are as well known in Costa Rica and Nicaragua as here. Sometimes, indeed, owing to the defect of proof, it has not been in the power of the Government to arrest these expeditions; but even when its exertions have not succeeded in preventing their departure, they have been fairly and generally successfully directed to prevent re-enforcements of men and material from reaching the adventurers who had eluded the vigilance of the officers of the law. * * * * * * *
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> But the presidents of these republics deal in specific facts as well as in more general allegations. They charge "that the Government of the United States has, according to official reports made to that of Costa Rica by its minister plenipotentiary at Washington, declared it was utterly powerless to prevent past attempts by the filibusters, or to protect the neutrality of Central America, owing to the insufficiency of the laws of the United States on this head."
>
> This accusation is wholly without foundation. No such declaration was ever made by the Government of the United States. It would have been an act at once of fatuity and of falsity. As to the difficulties in the enforcement of these laws, they are not denied, and have given much trouble to the Government in the efforts it has made to carry them into effect; but that they are powerless, or have proved so, no one, in or out of the United States, has a right to assert. The representatives of the Central American States may be called on as witnesses that, in all cases where they have given information to the Government that military expeditions against that region were about to be undertaken, measures have been immediately adopted to prevent their success, and to arrest and punish the offenders. Sometimes these efforts have failed, owing to causes not within the control of the Government, and sometimes they have been successful.

General Cass at the same time denied that a fresh invasion was preparing.[1]

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[1] Correspondence respecting Central America, presented to Parliament 1860, pp. 219, 220.

Notwithstanding this assurance, Walker's preparations continued undisturbed until he was again on the eve of setting out with recruited forces, when, on the 30th October, President Buchanan issued a proclamation very similar to that published in the time of Lopez:

> Whereas information has reached me, from sources which I cannot disregard, that certain persons, in violation of the neutrality laws of the United States, are making a third attempt to set on foot a military expedition within their territory against Nicaragua, a foreign state with which they are peace. In order to raise money for equipping and maintaining this expedition, persons connected therewith, as I have reason to believe, have issued and sold bonds and other contracts, pledging the public lands of Nicaragua and the transit route through its territory as a security for their redemption and fulfillment.
>
> The hostile design of this expedition is rendered manifest by the fact that these bonds and contracts can be of no possible value to their holders unless the present government of Nicaragua shall be *overthrown by force. [40] Besides, the envoy extraordinary and minister plenipotentiary of that government in the United States has issued a notice, in pursuance of his instructions, dated on the 27th instant, forbidding the citizens or subjects of any nation, except passengers intending to proceed through Nicaragua over the transit route from ocean to ocean, to enter its territory without a regular passport, signed by the proper minister or consul-general of the republic resident in the country from whence they shall have departed. Such persons, with this exception, "will be stopped and compelled to return by the same conveyance that took them to the country." From these circumstances the inference is irresistible that persons engaged in this expedition will leave the United States with hostile purposes against Nicaragua. They cannot, under the guise which they have assumed that they are peaceful emigrants, conceal their real intentions, and especially when they know in advance that their landing will be resisted, and can only be accomplished by an overpowering force. This expedient was successfully resorted to previous to the last expedition, and the vessel in which those composing it were conveyed to Nicaragua obtained a clearance from the collector of the port of Mobile. Although, after a careful examination, no arms or munitions of war were discovered, yet, when they arrived in Nicaragua, they were found to be armed and equipped, and immediately commenced hostilities.
>
> The leaders of former illegal expeditions of the same character have openly expressed their intention to renew hostilities against Nicaragua. One of them, who has already been twice expelled from Nicaragua, has invited, through the public newspapers, American citizens to emigrate to that republic, and has designated Mobile as the place of rendezvous and departure, and San Juan del Norte as the port to which they are bound. This person, who has renounced his allegiance to the United States, and claims to be President of Nicaragua, has given notice to the collector of the port of Mobile that 200 or 300 of these emigrants will be prepared to embark from that port about the middle of November.
>
> For these and other good reasons, and for the purpose of saving American citizens who may have been honestly deluded into the belief that they are about to proceed to Nicaragua as peaceful emigrants, if any such there be, from the disastrous consequences to which they will be exposed, I, James Buchanan, President of the United States, have thought it fit to issue this my proclamation, enjoining upon all officers of the Government, civil and military, in their respective spheres, to be vigilant, active, and faithful in suppressing these illegal enterprises, and in carrying out their standing instructions to that effect; exhorting all good citizens, by their respect for the laws, and their regard for the peace and welfare of the country, to aid the efforts of the public authorities in the discharge of their duties.

The "standing instructions" which the officers of the Government were enjoined to carry out were the instructions to use "due diligence," in the circular of 1857; but notwithstanding the efforts which it is to be presumed they made to exercise it, a party of Walker's filibusters embarked at Mobile in the sailing-schooner Susan, in December, 1858, without a clearance, on the pretense of being bound on a coasting voyage. An unsuccessful attempt was made by the revenue-cutter to intercept them, but there seems on this, as on the former occasion, to have been no ship of war with steam-power available to pursue her, and the party got off to sea accordingly, and the Susan was joined unmolested by the Fashion and the Washington, with military stores.

The expedition afterward broke down from the Susan being wrecked.

In 1859-'60.

Walker and his band then proceeded, in March, 1859, to California, whence they were said to have intended to make a descent on Punta Arenas; but this attempt was not carried into execution, and Walker returned to his usual employment of organizing expeditions in the United States.

In November, 1859, he, for the third time, eluded the "due diligence" of the Mobile authorities, and an expedition set sail once more from that port in his old vessel, the Fashion. The Fashion put back from want of stores, and some of the persons concerned in the expedition were arrested; but there is no report of their having been punished. He started again in June, 1860, in the John A. Taylor, was met off Ruatan by another vessel with arms, and effected a landing on the Central American coast. His career was brought to a close by his being shot at Truxillo in September, 1860.

Fenian raids against Canada.

FENIAN RAIDS AGAINST CANADA.

"Irish Republican Union, 1848."

The first society formed in the United States for purposes hostile to Great Britain appears to have been the "Irish Republican Union."

Massachusetts Emigrant Aid Society, 1855.

Phœnix Society, 1859.

Fenian Brotherhood.

The course of affairs in Ireland prevented the "Irish Republican Union" from carrying out any projects which it may have entertained, and it was succeeded in 1855 by the "Massachusetts Irish Emigrant Aid Society," which held its first convention at Boston, on the 14th of August of that year, and under whose auspices secret societies were established in different parts of the United States. These secret societies continued under various names, until, in 1859, they were reconstituted as the Phœnix Society. The civil war interrupted their progress, but in 1863 they again prominently appeared as the "Fenian Brotherhood" at a public meeting, held at Chicago, in November of that year.

Meeting at Chicago in 1863.

[41] *This meeting was reported to have been attended by 300 delegates, representing "circles," including twelve from military and naval circles.

At Cincinnati in 1865.

The second annual congress of the "Fenian Brotherhood" was held at Cincinnati in January, 1865, when their president declared that they were "virtually at war" with England, and spoke of "this American institution called the Fenian Brotherhood."[1]

Issue of Fenian bonds.

Establishment of the Irish republic at New York.

A congress of the Fenian Brotherhood met at Philadelphia on the 17th of October, 1865, and resolved upon the issue of "Fenian bonds," and the establishment of the Irish republic at New York. The head-center, as he was previously called, of the Brotherhood was now styled president of the Irish republic; the executive council entitled themselves "senators," with a president; a house was hired at a rental of $1,200; secretaries of the treasury, of war, &c., were appointed, and the Irish republic was declared to be founded at New York. The bonds had been prepared for the Fenians by the "Continental Bank-Note Company, New York," and were stamped "office of the secretary of the treasury." They were decorated with some emblems and inscribed:

> It is hereby certified that the Irish republic is indebted unto ————, or bearer, in the sum of (ten) dollars, redeemable six months after the acknowledgment of the independence of the Irish nation, with interest from the date hereof inclusive, at six per cent. per annum, payable on presentation of this bond at the treasury of the Irish republic.

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[1] Irish American, February 11, 1865.

As a measure of precaution against the possible hostile incursions of Fenians which were being constantly threatened, the Canadian government was compelled to call out for active service nine companies of the provincial militia in November, 1865, and to station them along the most exposed parts of the frontier.[1]

On the 2d of January, 1866, a Fenian convention was held at New York, which lasted for nine days, and at which a detachment of the 99th State militia, numbering twenty-two men, are stated to have acted as sentinels.

At a meeting at Buffalo, on the 26th of January, "General Sweeney pledged himself, if supported, that before next May he would conquer a certain territory upon which the Irish flag should be planted, and which shall be made the base of operations against England for the liberation of Ireland." "Colonel Roberts promised, within ninety days, to have the green flag supported by the greatest army of Irishmen upon which the sun ever shone."[2]

At another meeting at Pittsburgh, Sweeney said:

> We have made large purchases of arms and war material. If you are prepared to stand by us, we promise that, before the summer sun kisses the hill-tops of Ireland, a ray of hope will gladden every true Irish heart, for by that time we shall have conquered, and got hostages for our brave patriots at home. The green flag will be flying independently to freedom's breeze, and we will have a base of operations from which we can not only emancipate Ireland, but also annihilate England. If you support us, I pledge my name, fame, property, and life to this holy cause.[3]

Fenian raids.

Raid of 1866.

The American newspapers were full of accounts of the ferment among the Irish. The New York World of March 5 said, "The Fenian funds are disproportioned to any pacific objects. They mean war or they mean nothing. The honest contributors suppose they are furnishing the sinews of war. If the receivers of the money do not intend to apply it to this object, they are a set of sharpers, practicing on the credulity of their followers, to levy a revenue for their own use. If they really mean war, if, as is given out, they contemplate the invasion of Canada, this is a serious business, which challenges the thoughtful attention of all Irishmen and all American citizens."

That the Fenians did mean war was as plain as speech could make it. The "Irish American" reported that, at a meeting at Saint Louis, General Sweeney had announced that "considerable purchases of arms and war materials had already been made, and that large contracts for the same had been entered into." Roberts spoke without an attempt at disguise. "Now," he said, "there is but one outlet to Ireland by an armed force, and that is on a section of this continent, where, too, the English power to-day rules supreme, and that section, if it does not come immediately beneath the influence of American power, must be made to come into the hands of the Irish people; for the only way we can strike at English commerce is to have a place where we can have a government of our own, even before it should be recognized virtually on Irish soil. [42] *Who will say that Andrew Johnson will not recognize the Irish republic, even if it should be only in name, as long as we have soil that we can claim as our own? It is necessary to have some base from which we can send aid to our brothers who are struggling for liberty. We want a place from which we can send out privateers against English commerce; and by that means, I think, we can take enough to maintain a government for fifty years very respectably."

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[1] Correspondence relating to the Fenian invasion, laid before the Canadian Parliament, June, 1869, p. 139.

[2] New York World, January 27, 1866.

[3] World, February 20.

War meetings were also held at Portland, Lima, (Ohio,) Newport, Milford, Waterford, and other places.

Information having reached the Canadian government from many quarters showing that an inroad was imminent, and this information being supported by police reports of suspicious persons having been recognized entering Canada from the United States, as well as by open avowals at the Fenian public meetings, the executive council passed a minute on the 7th of March, calling out for duty 10,000 of the Canadian volunteers.

It was not until the end of May that the Fenian preparations were completed. Stores of arms and ammunition had been placed at convenient stations along the frontier, and the word had been given for an attack. On the 31st of May the Fenians began the march; detachments of 200 and 300 men, calling themselves railway laborers on their way to the West, began to arrive at Buffalo and Saint Albans from the large towns. By the evening of that day a body of Fenians, estimated at upward of 1,000, had reached Buffalo, and, on the morning of the 1st of June, 750 of them crossed over to Fort Erie, on the opposite bank of the Niagara River. What then followed is succinctly described in a dispatch from Lord Monck of the 4th, published in the "correspondence respecting the recent Fenian aggression upon Canada," presented to Parliament in February, 1867, which contains a full account of all that took place in Canada:

GOVERNMENT HOUSE, *Ottawa, June* 4, 1866.

SIR: Referring to my dispatch of the 1st of June, I have the honor to state, for your information, that the body of Fenian conspirators who crossed the frontier from Buffalo to Fort Erie on the morning of Friday, June 1, proved to be between 800 or 900 men, and seem to have been well armed.

I had previously had information that some such attempt would shortly be made, and a party of volunteers had been stationed at Port Colborne in anticipation of an attack.

I have not yet had time to receive official accounts of the military operations, but from telegraphic reports which have reached me I am able to give the following statement of what occurred, which I think may be considered authentic.

Immediately on the receipt of the intelligence of the invasion, Major General Napier pushed on by rail to Chippewa a force consisting of artillery and regular troops under Colonel Peacock, 16th regiment. Chippewa is about nineteen miles from Fort Erie, and there is no railway communication between the two places. On arriving at Chippewa, Colonel Peacock moved on in the direction of Fort Erie. On the morning of Saturday, June 2, the body of volunteers stationed as already mentioned at Port Colborne left that place by rail, which runs parallel to the shore of Lake Erie, and went in the direction of Fort Erie as far as a place called Ridgway; here they left the railway and proceeded on foot, apparently with the intention of effecting a junction with Colonel Peacock and his force.

They came upon the Fenians encamped in the bush and immediately attacked them, but were outnumbered and compelled to retire on Port Colborne. This occurred some time on Saturday, 2d June.

Colonel Peacock in the mean time was advancing in the direction of Fort Erie from Chippewa along the banks of the Niagara River, but was not able to reach the former place before nightfall.

The Fenians, however, did not await his arrival, but recrossed the river during the night between the 2d and 3d June, to the number of about 750 men, and, as appears from the accompanying telegram from Mr. Consul Hemans, were immediately arrested by the authorities of the United States.

I am happy to be able to inform you that the officers of the United States Government appear to have exerted themselves to prevent any assistance being supplied to the invaders. I transmit copies of telegrams received on this subject from Mr. Consul Hemans.

We have sixty-five prisoners in our possession, who have been by my direction committed to the common jail at Toronto to await trial.

I think it is creditable, both to the military and militia authorities in Canada, that they were in a position within twenty-four hours after the invasion of the province, at a point of the enemy's own selection, to place opposite to him such a force as compelled his precipitate retreat without even risking an engagement.

I shall not fail to send you more full particulars when I shall have received the official reports from the officers engaged, but the main facts are as I have stated them above.

I have, &c.,
(Signed) MONCK.

The vigilance of the authorities of the United States was not aroused until after the raid had occurred, when the raiders were stopped in their retreat into United States territory, and the party, now reduced by loss and desertion to 375, made prisoners, with O'Neill, their leader, and their arms taken from them.

[43] *The stores of arms at Buffalo, Ogdensburgh, and Saint Albans, were also seized by the United States district marshals. On the 5th of June the arrest of the other Fenian leaders was ordered; and on the 6th the President issued a proclamation stating that it had become known to him that certain evil-disposed persons had begun to set on foot, and had provided and prepared, and were still engaged in providing and preparing means for a military expedition and enterprise, which expedition and enterprise was to be carried on from the territory and jurisdiction of the United States against British territory, and authorizing the United States military forces and militia to be employed "to arrest and prevent the setting on foot and carrying on the expedition and enterprise aforesaid."

On the same day on which this proclamation was signed, the Fenian prisoners at Buffalo were released on their own recognizances; and, on the 7th, O'Neill and the two other principal leaders were also released on bail.

Another band of Fenians made a demonstration near Saint Albans, but retreated immediately on the appearance of a Canadian regiment.

Several arrests were made at Saint Albans, and elsewhere; and Roberts, the president of the Fenian senate, and chief instigator of the raid, was taken into custody at New York. His examination commenced on the 11th; on the 12th he was released on parole; and the district attorney eventually abandoned the prosecution, from want of evidence, with the intention of preferring an indictment before the grand jury.

On the 23d July, the House of Representatives of the United States passed the following resolutions:

Resolved, That the House of Representatives respectfully request the President of the United States to urge upon the Canadian authorities, and also the British government, the release of the Fenian prisoners recently captured in Canada.

Resolved, That this House respectfully request the President to cause the prosecutions instituted in the United States courts against the Fenians to be discontinued if compatible with the public interests.

In pursuance of the second of these resolutions, the Attorney-General instructed the district attorney at Buffalo to abandon the Fenian prosecutions there, and they were abandoned accordingly.

The prosecution was also withdrawn in the cases of Sweeney, Spear, McMahon, and the other leaders of the Vermont frontier demonstration, who had been arrested, but released on bonds of $5,000 after a day's detention; and the intended indictment of Roberts was dropped as a matter of course.

In October the Government decided to return the arms which had been taken from the Fenians.

The New York Times, of the 16th of October, gives an account of this transaction:

> BUFFALO, *Monday, October* 15.
>
> In pursuance of orders issued by the Attorney-General of the United States, with the concurrence of the Secretary of War, United States District Attorney Dart gave instructions to General Barry, commanding the military district, to turn over the arms seized from the Fenians in this city, and at other points within the military district, upon the giving of a bond in double the value of the arms, to be approved by Judge N. K. Hall, that the arms shall not be used in violation of the neutrality laws. There were twenty boxes of arms seized here, valued at $2,500. This general order was procured at the intervention of Hon. James M. Humphrey, of this city, the cabinet taking the position that, as the Government had abandoned the prosecution of the Fenian officers and soldiers, it could not consistently hold their private property. Several thousand dollars' worth of arms held at Erie, Oswego, Plattsburgh, Malone, Troy, and other places, will be turned over on the same terms. It is said that the arms will be sold to Santa Anna. P. O. Day and T. B. Gallagher signed the bond.

These persons were well known as having taken an active part in promoting the raid, Gallagher being editor of the Buffalo Fenian Volunteer. The bond which they signed was, it is scarcely necessary to point out, a mere form, as it would have been utterly impracticable to identify the arms on another occasion. The alleged intention of selling the arms to Santa Anna, who was then said to be meditating a descent on Mexico, was a mere transparent pretext.

The arms do not seem to have been all restored until the following year.

This closes the account of the first Fenian raid on Canada, which had cost the Dominion the loss of an officer and six privates of the Queen's Own Volunteer Rifles killed, and four officers and twenty-seven men wounded, many of them maimed for life. Besides this bloodshed there was the heavy cost to the country in pensions, gratuities, and payment of claims arising out of the raid, as well as the serious charge on the treasury for summoning the volunteers, and the hinderance to industry by such a disturbance of the country at a season of the year when agricultural pursuits were in full operation.

[44] *SECOND RAID ON CANADA.

Second raid on Canada, 1870.

A renewal of the attack was threatened in the autumn of 1866, and the Canadian government was obliged to form a camp of volunteers in the neighborhood of Niagara Falls from August to the second week in October. The expense of this camp, over and above the appropriated drill pay and loss to the industry of the province from the withdrawal of a large number of men from their occupations, amounted, in money, to $80,000.[1]

During the year 1867 the Fenian Brotherhood were occupied in promoting Fenian disturbances in England and Ireland, in which Halpin, Burke, McCafferty, and others who had come over from the United States for the purpose, were ringleaders.

In 1868 the Fenians obtained from the Government the return of the arms seized at Saint Albans, consisting of about 1,300 muskets, and again proceeded to organize an expedition against Canada.

In November, 1868, a Fenian congress was held in Philadelphia, and O'Neill marched through the town at the head of three regiments of the so-styled Irish republican army, in green uniforms, numbering, as was reported, 3,000 men.[2]

During the year 1869 the Fenians were engaged in making fresh military preparations. On the 7th of February, 1870, O'Neill wrote to the circles that a congress of the Fenian Brotherhood was ordered to meet in New York on the 8th of March, and desired them to send none but the best and most reliable men, and if it be possible "to let them have a military record."

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[1] Canadian Parliamentary Papers.

[2] Irish American, December 5, 1868.

The accounts received from various quarters of O'Neill's avowed intentions, and the probability of some attack being made, rendered it necessary for the Canadian government to be on the alert.

On the 9th of April 6,000 militia were called out, and two Canadian gun-boats armed, manned, and fitted out, to cruise along the water boundary.

On the 12th of May, the governor-general, at the opening of the Canadian parliament, said that "the information which reached my government from many quarters as to the designs of parties styled Fenians, armed and openly drilled in various parts of the neighboring States, rendered it incumbent on me to apply to parliament to pass an act to suspend the *habeas corpus* act, as well as to call out an armed force for the defense of the frontier." "The vigorous steps resorted to, and the laudable promptitude with which the native militia responded to the call to arms, chilled the hopes of the invaders, and averted the menaced outrage, so that I now entertain a sanguine hope that I shall not be placed under the necessity of exercising the powers so intrusted to me."

In the third week in May the Fenian detachments began to collect and move toward the frontier. The first batch arrived at Saint Albans on the evening of the 23d, and on the same day another party made their appearance at Malone. On the 24th the President issued a proclamation stating that it had come to his knowledge that sundry illegal military enterprises and expeditions were being set on foot within the territory and jurisdiction of the United States against Canada, and enjoining all officers in the service of the United States to prevent those unlawful proceedings, and to arrest and bring to justice those engaged in them. On the 25th O'Neill's party made their attack from Franklin, a village near Saint Albans, but were at once repulsed and driven back across the frontier. O'Neill was then arrested by the United States marshal. A detachment of forty-five men of the Fifth United States Infantry arrived at Saint Albans in the evening to preserve order.

The end of the raid from Malone, in New York State, was the same. The Fenians took up a position, strengthened by a breastwork of logs and a trench, just beyond the United States frontier, and, on being attacked, broke into a disorderly flight across it.

Trial and conviction of the raiders.

Several of the leaders were arrested and a quantity of arms taken possession of by the United States authorities. Altogether thirteen tons of arms are said to have been seized at the two raids, and conveyed to United States arsenals; besides these a field-piece and numbers of rifles were abandoned on the scenes of action. On the 12th of July the trials of the Malone raiders took place; two were condemned to two years' imprisonment and a fine of $10, and one to one year's imprisonment and a similar fine. On the 29th of July the Saint Albans raiders were tried; O'Neill was sentenced to two years' imprisonment and a fine of $10; another of the leaders to nine months'
imprisonment, and a fine of $5; and another to six months' im-
[45] prisonment and a fine of $1. The *proceedings against two
others were postponed. On the 12th of October O'Neill and his companions received an unconditional pardon from the President.

Fenian raiders pardoned by the President.

On the day on which the pardon was granted the President published a proclamation warning evil-disposed persons that the law forbidding hostile expeditions against friendly states would for the future be rigorously enforced.

President's proclamation.

Whereas divers evil-disposed persons have, at sundry times, within the territory or jurisdiction of the United States, begun, or set on foot, or provided, or prepared, the means for military expeditions or enterprises to be carried on thence against the territories or dominions of powers with whom the United States are at peace, by organizing bodies pretending to have powers of government over portions of the territories or dominions of powers with whom the United States are at peace, or by being, or assuming to be, members of such bodies; by levying or collecting money for the purpose, or for the alleged purpose, of using the same in carrying on military enterprises against such territories or dominions; by enlisting or organizing armed forces to be used against such powers, and by fitting out, equipping, and arming vessels to transport such organized armed forces to be employed in hostilities against such powers;

And whereas it is alleged, and there is reason to apprehend, that such evil-disposed persons have also, at sundry times, within the territory and jurisdiction of the United States, violated the law thereof by accepting and exercising commissions to serve by land or by sea against powers with whom the United States are at peace, by enlisting themselves or other persons to carry on war against such powers; by fitting out and arming vessels with intent that the same shall be employed to cruise or commit hostilities against such powers, or by delivering commissions within the territory or jurisdiction of the United States for such vessels, to the intent that they might be employed as aforesaid;

And whereas such acts are in violation of the laws of the United States in such case made and provided, and are done in disregard of the duties and obligations which all persons residing or being within the territory or jurisdiction of the United States owe thereto, and are condemned by all right-minded and law-abiding citizens:

Now, therefore, I, Ulysses S. Grant, President of the United States of America, do hereby declare and proclaim that all persons hereafter found within the territory or jurisdiction of the United States committing any of the afore-recited violations of law, or any similar violations of the sovereignty of the United States for which punishment is provided by law, will be rigorously prosecuted therefor, and upon conviction and sentence to punishment will not be entitled to expect or receive the clemency of the Executive to save them from the consequences of their guilt, and I enjoin upon every officer of this Government, civil or military, or naval, to use all efforts in his power to arrest, for trial and punishment, every such offender against the laws providing for the performance of our sacred obligations to friendly powers.

Raid of 1871.

On the 5th of October last, less than a year after his release and after this proclamation, O'Neill led a third raid against Canada, on the Pembina frontier, but was arrested by the United States troops, and this time met with entire immunity, being discharged on the ground that there was no evidence of his having committed any overt act within the United States territory.

This closes the history of the Fenian raids.

MILITARY EXPEDITIONS IN AID OF THE CUBAN INSURRECTION.

Military expeditions in aid of the Cuban insurrection.

The proclamation of October, 1870, which has been cited above, referred not only to the proceedings of the Fenians, but to expeditions in aid of the Cuban insurrection.

Mr. Roberts, the Spanish minister at Washington, represented to the United States Government that he had "seen the departure of various filibustering expeditions, in broad daylight and unmolested, from New York and other Federal ports, and had finally felt himself obliged, by the incomprehensible apathy of the authorities, to take the initiative in order to prevent these repeated infractions of the neutrality laws."—(Mr. Roberts to Mr. Fish, September 18, 1869.)[1]

The principal expeditions referred to seem to have been those undertaken in the Grapeshot and Peritt, which landed parties of men and supplies in Cuba in May.

The United States Secretary of State, in his reply, said that he "was forced to admit with regret that an unlawful expedition did succeed in stealthily escaping from the United States and landing on the shores of Cuba," but that it had escaped unnoticed by either the United States officers or, as he believed, by the agents of the Spanish government.[1]

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[1] Papers relating to Cuban affairs, presented to the House of Representatives, February 21, 1870, pp. 133-138.

A further expedition was subsequently dispatched from New Orleans in the ship Cespedes, or Lilian, in October, 1869, to Cedar Keys, Florida, where she was met by a body of from 300 to 350 armed men, under command of a Cuban named Goicurria, who had sailed from New York to join her in the steamer Alabama. The Lilian failed in landing the expedition on the Cuban coast, and was finally stopped and condemned for a breach of the British foreign-enlistment act at Nassau.

[46] *A still more notorious vessel is the Hornet, or Cuba. The Hornet is an iron paddle-wheel steamer, originally a blockade-runner, of 820 tons. She was captured during the civil war, and taken into the United States Navy as a dispatch-boat, in which capacity she carried eight guns. She was sold in June, 1869, to Señor Macias, and it is believed retained her port-holes. After being refitted at Kensington, near Philadelphia, she cleared for Halifax, but was detained for inquiry as to her intended proceedings. At Halifax she was again detained on the assertion that she had heavy guns on board, but, this proving incorrect, she was released, and sailed along the United States coast. Coals, supplies, and arms are stated to have been shipped on board, and she then put in at Wilmington, North Carolina, flying the Cuban flag. Here she was arrested for violation of the neutrality laws, and her commander, a United States citizen, and twenty-three others tried, and the vessel herself taken possession of by the United States authorities.

The result of the trial was that the judge held that only two acts were shown to have been committed within the jurisdiction of the United States from which an intent to violate the neutrality laws could be inferred. These were the enlistment of a witness, D. D. Munro, and the reception of a cargo of coal in Long Island Sound. The commander and sixteen of the prisoners were discharged, and six others released on bail.[2] It does not appear that any further proceedings were taken against them.

The vessel was then libeled in the admiralty court, but after some delay was returned to her former owner, Señor Macias, on bonds being given by Senator Chandler and General Butler that she would not be again used in violation of the neutrality laws. She, however, has since recommenced her career, and after taking in stores and, as is supposed, arms, at Aspinwall, succeeded in landing an expedition in Cuba in January, 1871. She then took refuge at St. Domingo, and in January of the present year was convoyed to Baltimore, under the protection of a United States ship of war. It remains to be seen whether any legal proceedings will be instituted against her, and, if so, what will be their result.

The views held by the United States Secretary of State with regard to the Cuban Junta, at New York, by whom these expeditions were concerted, were thus expressed in a dispatch to the United States minister at Madrid, in January, 1870:

> "Had the Cuban Junta," he says, "expended their money and energy in sending to the insurgents arms and munitions of war, as they might have done consistently with our own statutes, and with the law of nations, instead of devoting them to deliberate

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[1] Papers relating to Cuban affairs, presented to the House of Representatives, February 21, 1870, pp. 133-138.

[2] United States *vs.* The officers of the steamship Cuba, reported in Wilmington Journal, October 31, 1869.

> violation of the law of the United States, and had they, in lieu of illegally employing persons within the dominions of the United States to go in armed bands to Cuba, proceeded thither unarmed themselves to take personal part in the struggle for independence, it is possible that the result would have been different in Cuba, and it is certain that there would have been a more ardent feeling in the United States in favor of their cause, and more respect for their own sincerity and personal courage."[1]

And in a letter to Mr. Roberts, dated the 28th of December, Mr. Fish pressed upon Mr. Roberts the necessity of legal evidence being furnished in order to enable the local authorities to act:

> The undersigned takes the liberty to call the attention of Mr Lopez Roberts to the fact that a district-attorney of the United States is an officer whose duties are regulated by law, and who, in the absence of executive warrant, has no right to detain the vessels of American citizens without legal process, founded not upon surmises, or upon the antecedent character of a vessel, or upon the belief or conviction of a consul, but upon proof submitted according to the forms required by law.[2]

Her Majesty's government do not adduce these instances of recent violations of the neutrality laws of the United States, the facts of which are notorious, in any spirit of accusation or recrimination. But the attention of the arbitrators has been called to the long series of illegal expeditions which have been organized and dispatched from the United States against the territories of friendly nations during the last twenty-two years, as instances of the flagrant manner with which the laws of the United States have been evaded, as shown by the messages of successive Presidents, in spite of what Her Majesty's government assumes to have been the intentions and efforts of the executive authorities. From these multiplied examples the arbitrators may be enabled to form an estimate of the measure of "due diligence" in executing laws for the prevention of such enterprises which the United States have considered sufficient in their own authorities, and could not, therefore, reasonably expect to be exceeded by the authorities of other countries.

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*RECAPITULATION.

Out of this retrospect, which has been rendered necessary by the statements introduced into the case of the United States, the following observations arise:

Precedents appealed to by the United States.

1. The argument of the United States, that a neutral government is not only bound to exert reasonable care for the purpose of preventing violations of its neutrality, but is bound to apply to the various duties which purport to be enumerated in the three rules, pursued in their minutest details, and pushed even beyond the natural meaning of the words employed, a diligence the most energetic, vigilant, and exact, finds (whether it be true or not) no support in this history. However rigorously the United States may now be disposed to estimate the obligations of other powers, they have not so construed their own.

Recapitulation.

2. The argument that compensation is due, as of right, for any loss sustained in war by a belligerent, which may be traced to a relaxation of diligence on the part of neutral powers in preventing violations of neutrality, whether it be sound or not in itself, is not supported by any precedent adduced. The United States have never paid, nor have they ever admitted a liability to pay, such compensation.

3. Where compensation has been claimed in such cases, it has been

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[1] Papers relating to Cuban affairs, presented to the House of Representatives February 21, 1870, p. 69.

[2] Papers relating to the foreign relations of the United States transmitted to Congress with the annual message of the President, December 4, 1871, p. 786.

limited to the values of ships and cargoes captured by vessels unlawfully fitted out and armed; and the claim has never been admitted, except when such prizes have been brought by the captors within the jurisdiction of the neutral power.

4. The position that a neutral government is under an obligation to seize and detain any armed ship entering its ports, even though commissioned as a public ship of war, which has received any equipment or any adaptation for war within the jurisdiction of the neutral, is equally unsupported. There is no trace of such an obligation. The American Government did indeed, in 1793, direct that privateers which had violated its neutrality should not have asylum in its ports. But even this (which is a very different thing) it acknowledged no obligation to do; and the exclusion (which does not appear to have been extended to public ships of war) seems to have been by no means steadily enforced.

Finally, Her Majesty's government cannot forbear to remark that the history of this subject is from first to last a history of unlawful enterprises originated either in the United States or by citizens of the United States in other countries. Great Britain, Spain, Portugal, Mexico, the Central American Republics, Cuba, and Canada, have from time to time been harassed by privateers fitted out in the ports of the Union, or hostile expeditions organized and assembled within its territory. And when, in 1861, civil war broke out within the Union itself, it was by American citizens that the plan was formed to abuse, for the more effectual prosecution of that war, the soil and waters of a neutral and friendly nation. Baffled, in the great majority of cases, by the restraints of the law and the watchfulness of the Executive, they contrived, in a very few, to elude those restraints. They procured ships, transported them to distant seas, armed and manned them there, and employed them in cruising against their countrymen, not, indeed, for the sake of plunder or profit, but to assist the people of their own States in a struggle for independence. The Southern States have returned to their allegiance. They have been treated with clemency, and no attempt has been made to exact from them, by fines or forfeitures, pecuniary reparation for the losses which the Government and the rest of the people of the United States have sustained through their means. The acts which they directed and authorized, when in arms against the Union, are now, on behalf of the nation of which they form an important part, made the subject of complaints and demands against Great Britain. Her Majesty's government has been ready and willing to give the United States all reasonable satisfaction by submitting the question to the award of an impartial tribunal. But it is surely no unjust observation that, if ever there was a case in which a power, deeming itself aggrieved, might have been expected to state its complaints with moderation, and to make ample allowance for administrative difficulties and unavoidable deficiencies of proof, that occasion is the present and that power is the United States.

*PART IV.

VARIOUS COMPLAINTS OF THE UNITED STATES AGAINST GREAT BRITAIN; TRAFFIC IN MUNITIONS OF WAR.

PART IV.—Various complaints of the United States against Great Britain.

Traffic in munitions of war.

The fourth part of the Case of the United States contains a general and comprehensive statement of all the complaints which they conceive themselves to have against Great Britain. It will be found, on examination, that these complaints are of two classes. A small number of them have reference to the vessels enumerated at p. 320 of the Case, or some of them, and charge or suggest against Great Britain certain failures of duty in respect of those vessels. A much larger number have no reference whatever to those vessels, and do not charge or suggest any failure of duty in respect of them or any of them. The former class are within the scope of the reference to arbitration; the latter are not within it.

In the Case of the United States, however, these various complaints have been connected together in a narrative which draws no distinction between those which are and those which are not relevant to the questions at issue.

Analyzing the narrative, we find that it is in substance as follows:

The government of the Confederate States sent to England, to Nassau, to Havana, and other places, agents instructed to purchase arms and munitions of war, with other things of which the Confederate States stood in need, and to procure ships suitable for warlike use. The persons sent to England on this errand were supplied with funds by remittances of specie and consignments of cotton, all necessary payments being made by drafts on a mercantile house in Liverpool, who were "depositories" of the funds. The whole southern coast being blockaded, it was necessary for the agents to send their purchases in such a manner as to elude the blockade. The British islands of New Providence and Bermuda offered, from their geographical position, peculiar facilities for the purpose, and advantage was taken of these facilities, large quantities of goods being sent thither from England, and forwarded thence to different confederate ports. Some of the ships employed in this traffic were the property of the confederate government; some others were chartered by its agents. The colonial authorities, it is affirmed, encouraged the trade, and placed obstacles in the way of the United States cruisers which were endeavoring to suppress it. It is added that the difficulties thus created were enhanced by an order of the British government, which directed that vessels of war should not be admitted, unless in case of distress, to the ports of the Bahama Islands. Meanwhile the confederate agents contracted with ship-builders in England and Scotland for ships suitable for war to be built to order, and purchased some others in the market. Three or four of these vessels they succeeded in sending to sea; the remainder were stopped. They also purchased guns, munitions of war, and ships' stores, and dispatched them to various places—the Azores, the Madeira Islands, one of the Bahamas, the coast waters of France—where they were put on board of the vessels. English seamen were induced to serve in them, and were paid their wages through the instrumentality of the Liverpool house. The British government required, before it would order the seizure of a suspected vessel, evidence which could be produced in a court of justice. It declined during the war to propose to Parliament any alteration of the law applicable to such cases, stating that the law was sufficient, and that where it had failed the deficiency had been in timely proof that the acts complained of were within the law.

This is the substance of the complaints of the United States, stated in simple terms. Some of them are true, some erroneous, and the greater part irrelevant to the questions referred to the tribunal.

It is the right of Great Britain to decline absolutely any discussion on the question whether, in taking no steps to prevent the conveyance of arms and munitions of war from British or colonial ports to the Confederate States, or in any matter whatever connected with that traffic, her government failed to discharge any international duty. But [49] that *something should here be said on this subject may perhaps be convenient to the arbitrators.

In the case presented to the tribunal on the part of Great Britain, the following propositions were laid down as agreeable to the principles of international law and the practice of nations:

> A neutral government is bound to exercise due diligence, to the intent that no place within its territory be made use of by either belligerent as a base or point of departure for a military or naval expedition, or for hostilities by land or sea.
>
> A neutral government is not, by force of the above-mentioned obligation or otherwise, bound to prevent or restrain the sale within its territory, to a belligerent, of articles contraband of war, or the manufacture within its territory of such articles to the order of a belligerent, or the delivery thereof within its territory to a belligerent purchaser, or the exportation of such articles from its territory for sale to, or for the use of, a belligerent.

Her Majesty's government has hitherto believed that, on this subject, no difference of opinion existed between Great Britain and the United States. By no power has the principle been asserted so strongly, unreservedly, and consistently as by the United States, and no nation has more freely acted upon it.[1]

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[1] It can hardly be necessary to cite examples. The emphatic enunciation of this doctrine in Mr. Jefferson's letter to Mr. Hammond (15th May, 1793) has been often referred to:

"The purchase of arms and military accouterments by an agent of the French government in this country, with an intent to export them to France, is the subject of another of the memorials; of this fact we are equally uninformed as of the former. Our citizens have been always free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent powers on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned, and that even private contraventions may work no inequality between the parties at war, the benefit of them will be left equally free and open to all."—(Appendix to British Case, vol. v, p. 242.)

It will be observed that this was subsequent to a proclamation issued by the President, in which conveyance of contraband to a belligerent was specified as among the acts involving a liability to "punishment or forfeiture under the law of nations," and notice was given that prosecutions would be instituted against all persons who should, within the cognizance of the courts of the United States, "violate the law of nations with respect to the powers at war or any of them." It was written in answer to a representation by the British minister to the effect that he had "received informa-

These propositions are true without any qualification, and they have long been accepted and acted upon as true without qualification by the maritime powers of Europe and of the American continent. Each belligerent is at liberty to profit by the traffic, so far as it may be of use to him; he is free also to repress it, if he can, so far as it is of assistance to his enemy; and for this latter purpose he is armed by the [50] custom of nations *with exceptional powers, which exist only during the war, the power to detain, search, and capture on the high seas the vessels of nations with which he is at peace. The justification of the usage which intrusts these powers to the belligerent may be found in the fact that the repression of the trade, so far as it militates against his interests, is abandoned to him, and is not a duty of the neutral.

It is perfectly immaterial in the view of international law whether the contraband goods are purchased in the neutral market by persons who resort thither for the purpose, or are shipped to order, or consigned for sale to persons in the belligerent country. It is immaterial whether the purchases are effected by agents of the belligerent government or by private speculators. It is immaterial whether the ownership of the vessels in which the transportation is effected is belligerent or neutral; the only differences are that, in the former case, the neutral supplies the merchandise alone, while in the latter he supplies both merchandise and carriage, hazarding the chances of detention and capture; in the former the cargo is liable to condemnation as enemy's goods in an enemy's ship; in the latter as contraband goods in the ship of a neutral. It is immaterial whether the ship which conveys them is chartered or owned by private persons or by the belligerent government itself, provided she be

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tion from various respectable quarters, that a considerable quantity of arms and military-accouterments, which an agent of the French government has collected and purchased in this country, is now preparing to be exported from New York to France."

"The secrecy with which a transaction of this nature is generally conducted, has rendered it impossible for the undersigned to procure precise proof of it. Entertaining, however, no doubt of the existence of the fact, he esteems it his duty to lay it immediately before the Executive Government of the United States, which he trusts will deem it more expedient (if any measures for the purpose can be devised) to prevent the execution of this contravention of the President's proclamation than to expose vessels belonging to its citizens to those dangers and difficulties which may result from the circumstance of their carrying articles of the description above mentioned." (Mr. Hammond to Mr. Jefferson, May 8, 1793.)—Appendix to British Case, vol. v, p. 241.

Mr. Hammond's cautious language shows that he understood the effect of a proclamation of neutrality as calling attention to the existing prohibitions, not as creating new ones. The Government of the United States apparently do not understand this. He appears to have accepted Mr. Jefferson's answer without demur.

The minister of the Mexican Republic, in 1862, when Mexico was invaded by a French army, urged the American Government to prohibit the export of mules and wagons which French agents were purchasing for the use of the expedition. Mr. Seward refused, citing the following authorities:

Instructions to collectors of customs, issued by Alexander Hamilton, Secretary of the Treasury, August 4, 1793.

"The purchasing and exporting from the United States, *by way of merchandise*, articles commonly called contraband, being generally warlike instruments and stores, is free to all parties at war, and is not to be interfered with. If our own citizens undertake to carry them to any of these parties they will be abandoned to the penalties which the laws of war authorize."—(American State Papers, Foreign Relations, vol. 1, p. 141.)

Mr. Webster to Mr. Thompson, July 8, 1842.

"It is not the practice of nations to undertake to prohibit their own subjects from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it under the liabilities and penalties prescribed by the law of nations or particular treaties."—(Webster's Works, vol. 6, p. 452.)

employed only for carriage and not armed for war. Nor, again, does the proximity of a neutral port, whence the trade is carried on, to either belligerent country, make any difference in the duties of the neutral government. Nor does it make a difference that the coast or harbors of either belligerent are blockaded, more or less effectively, by the other. As the neutral government is under no obligation to prevent breaches of blockade and the export of contraband when the transactions are distinct, so it is under no obligation to prevent them when the transactions are combined.

It is necessary to state this principle firmly and clearly; otherwise it would be at the mercy of every powerful belligerent. There never was a war in which some special circumstances might not be pleaded and special reasons given for setting it aside in the interest of one party or the other.

ARMS AND MILITARY SUPPLIES PURCHASED BY THE UNITED STATES.

At the commencement and during the course of the war both belligerents resorted to Great Britain for supplies of arms and military material, of which both were in need. The wants of the Government of the Union appear to have been at first even more pressing than those of its adversaries, since the Government which preceded that of Mr. Lincoln had removed, it is said, considerable quantities of arms from the northern arsenals to those in the Southern States.

[51] On this subject the Secretary of War at Washington, in his

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Mr. Webster's Instructions of July 8, 1842, *cited in Gardner's Instructions, American International Law, page* 552.

"That if American merchants, in the way of commerce, had sold munitions of war to Texas, the Government of the United States, nevertheless, were not bound to prevent it, and could not have prevented it without a manifest departure from the principles of neutrality."

President's message, 1st session 34th Congress—Franklin Pierce, President; William L. Marcy, Secretary of State.

"The laws of the United States do not forbid their citizens to sell to either of the belligerent powers articles contraband of war, or take munitions of war or soldiers on board their private ships for transportation; and although, in so doing, the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach of national neutrality, nor of themselves implicate the Government."—(Appendix to British Case, vol. v, p. 332.)

The passage last cited proceeds as follows:

"Thus, during the progress of the present war in Europe, our citizens have, without national responsibility therefor, sold gunpowder and arms to all buyers, regardless of the destination of those articles. Our merchantmen have been, and still continue to be, largely employed by Great Britain and France in transporting troops, provisions, and munitions of war to the principal seat of military operations, and in bringing home the sick and wounded soldiers; but such use of our mercantile marine is not interdicted either by the international or by our municipal law, and, therefore, does not compromise our neutral relations with Russia."

That the United States still adhere to this principle was abundantly proved in the course of the recent war between France and Germany.

It is in the power, of course, of a neutral government to prohibit the exportation of contraband, if it think fit, and if such a prohibition be within the limit of its constitutional authority, but even such a prohibition gives no right to either belligerent.

"Der Verkauf an und für sich allein kann zwar von einem neutralen staate selbst seinen Angehörigen untersagt werden; allein durch die Ueberschreitung dieses Verbotes macht man sich nur dem eigenen staate verantwörtlich; der kriegführende selbst hat seinerseits keine Befügniss die contravention zu ahnden."—(Heffter, section 161, fifth edition.)

report to the President on the 1st of July, 1861, made the following statements:

> Previous to the early part of last year the Government had a supply of arms and munitions of war sufficient for any emergency; but through the bad faith of those intrusted with their guardianship, they were taken from their proper depositories and distributed through portions of the country expected to take part in the contemplated rebellion. In consequence of the serious loss thus sustained, there was available at the commencement of the outbreak a much less supply than usual of all kinds. But through the zeal and activity of the Ordnance Bureau the embarrassment thus created has been in a great measure overcome. As the capacity of the Government armories is not equal to the supply needed, even after having doubled the force of the Springfield armory, the Department found it absolutely necessary to procure arms to some extent from private manufacturers. * * * Some patriotic American citizens resident in Europe, fearing that the country might not have a sufficient supply, purchased, on their own responsibility, through co-operation with the United States ministers to England and France, a number of improved cannon and muskets, and at your instance this Department accepted the drafts drawn to defray the outlay thus assumed. A perfect battery of Whitworth six 12-pounder rifled cannon, with 3,000 rounds of ammunition, the munificent donation of sympathizing friends in Europe, has also been received from England.[1]

Arms and military supplies purchased by the United States.

In his report of 1st December in the same year, the same minister said:

> As stated in my last report, at the commencement of this rebellion the Government found itself deficient in arms and munitions of war, through the bad faith of those intrusted with their control during the preceding administration. The armory at Harper's Ferry having been destroyed to prevent its possession and use by the rebels, the Government was compelled to rely upon the single armory at Springfield and upon private establishments for a supply of arms. * * * After having made contracts for arms with the private establishments in this country, it was deemed necessary by the President, to insure a speedy and ample supply, to send a special agent to Europe with funds to the amount of $2,000,000 to purchase more. I am gratified to state that he has made arrangements for a large number of arms, part of which have already been delivered. The remainder will be shipped by successive steamers until all shall have been received.[2]

A commission was appointed by the Government of the United States, in March, 1862, to audit the contracts made by the War Department for ordnance, arms, and ammunition, and in their report, which was laid before Congress, the following remarks occur on the steps taken to purchase arms abroad:

> First, as to foreign arms: it was of course absolutely necessary to resort to these in equipping within a few months more than 500,000 men, and it was impossible in all the workshops of Europe to have had arms manufactured as rapidly as our public necessities required. Under such circumstances prices naturally rose, and inferior (often second-hand) arms had to some extent to be purchased. But these difficulties were greatly aggravated by the lack of system which prevailed. The States and the General Government entered the market together as rival purchasers, and thus the members of the same national family bid directly against each other. The folly of this is the more remarkable when it is remembered that these arms bought by the States were, in fact, for the use of the General Government, and will no doubt, in the end, be paid for by it. The General Government itself employed numerous agents not acting in unison, and often becoming, therefore, competitors of each other. A few of these made purchases directly for the Government: the greater number sprang up in the shape of "middle men," to whom, though not dealers in arms nor skilled in their value, contracts were awarded upon their own terms, only to be sublet to the actual importers. * * * * In regard to a considerable portion of these foreign arms, Government inspection was permitted in Europe before shipment, but so utterly inadequate and so incompetent was the force assigned to this duty that it became a mere empty form devoid of all utility or protection. Of this and other negligences and imprudences, the practical result has been that a large proportion of our troops were armed with guns of a very inferior quality; that tens of thousands of the refuse arms of Europe are at this moment in our arsenals, and thousands more still to arrive.[3]

Lord Lyons wrote to Lord Russell on the 4th of May, 1861: "Mr.

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[1] Appendix to British Case, vol. vi, p. 151.

[2] Ibid., p. 164.

Seward said to me on the 1st instant that perhaps he ought to have told me before that the United States Government had sent agents to England to purchase arms. He added that the agents would go on to France for the same purpose."[1]

It will be seen that in the report of Captain Huse, who is stated to have been the confederate agent sent to Europe for a similar purpose, he mentions the United States agents and the agents of individual Northern States as his most formidable competitors. "Their orders," he says, "appear to have been unlimited, both as regards price [52] and *quantity, and they paid cash in every instance."[2] Further on he mentions that "the United States agent, in this case the minister, Mr. Dayton, has purchased, within a few days, 30,000 old flint-lock muskets, which are to be altered before they are sent to the United States."

The purchases of small arms and other military stores in England were partly made by authorized agents acting under the direct orders of the Government of the United States, partly by agents acting under the orders of the governors of particular States, and partly by mercantile firms, acting, however, in some cases under the authority of the Federal or States Government.

Colonel Thomas, of the United States Army, was in England during the war, and acknowledged that he had come over to superintend the purchases of military stores. He sought and obtained much information on this subject at the Government establishment at Pimlico. It appears, however, that the agent mentioned in the report of the Secretary of War was a Colonel G. L. Schuyler. He was, in July, 1861, appointed by the President of the United States "a duly authorized agent to purchase arms in Europe for the War Department." He received his instructions from the Secretary of War, with a memorandum from General J. W. Ripley, of the Ordnance Department at Washington, specifying the arms to be purchased, viz: 100,000 rifle-muskets with the bayonets, 10,000 cavalry carbines, 10,000 revolvers, and 20,000 sabers.[3] The financial arrangements for these purchases were to be made by the Secretary of the Treasury with Messrs. Baring, financial agents for the United States in London, and a credit of $2,000,000 was, as has been seen, appropriated for the purpose. The money was placed at the order of Colonel Schuyler and the United States ministers in France and Belgium.[1] The arms were to be consigned to the care of Mr. Hiram Barney, collector of the port of New York. Colonel Schuyler proceeded to Birmingham, where, as appears from a report subsequently made by him in April, 1862, to the Secretary of War, he purchased of the Small Arms Association 13,129 long Enfield rifles and 1,880 short Enfield rifles with saber bayonets—in all, 15,000, all of which arrived safely in the United States, consigned as directed in his instructions. He also made arrangements there with the American house of Van Wart, Son & Co., who had zealously co-operated with him to procure arms for delivery early in January, and who, between May, 1861, and February 15, 1862, ordered from the Birmingham Small Arms Company, and forwarded to Messrs. Baring, and Messrs. George Wright & Co., at Liverpool, for shipment to the United States, an aggregate amount of 26,540 rifles. From England he proceeded to the Continent of Europe, where he continued his purchases; and in a letter from the War Department at Washington to General

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[1] Appendix to British Case, vol. vi, p. 151.

[2] Appendix to Case of United States, vol. vi, p. 34.

[3] Appendix to British Case, vol. vi, p. 153.

Ripley, of the 18th November, 1861, information is said to have been received from him that the steamer City of Washington would leave Liverpool on the 6th of November, having on board 12,955 Enfield rifles from Dresden, 500 sabers, 800 revolvers, one case of bullet-molds. The steamer Saxonia, leaving Southampton on the 6th, was to bring 7,000 cavalry carbines and 500 sabers; the steamer Fulton, (November 12,) 20,000 percussion rifles; the steamer leaving Hamburg on the 17th of November, 30,000 more.[1]

The War Department had written repeatedly and pressingly to Colonel Schuyler on the subject of his mission. On the 2d of September the Secretary wrote: "We need arms; secure them at any reasonable price and forward without delay."[2] Again, on the 16th, "I trust that nothing will delay a prompt delivery of the arms which you have purchased. You will please express my acknowledgments to Messrs. Baring, Brothers & Co., for their prompt and patriotic action in facilitating your operations."[2] On the 8th of October, "I notice, with much regret, that there are no guns sent. * * * * Prompt and early shipments of guns are desirable. We hope to hear by next steamer that you have shipped from 80,000 to 100,000." And, on the 21st of October, "the Department earnestly hopes to receive by the Arago the 12,000 Enfield rifles, and the remainder of the 27,000, which you state you have purchased, by the earliest steamer following. * * * * Could you appreciate the circumstances by which we are surrounded you would readily understand the urgent necessity there is for the immediate delivery of all the arms you are authorized to purchase."[3]

In the summer or autumn of 1861 Mr. J. R. Schuyler and Mr. Tomes, of the firm of Schuyler, Hartley & Graham, of New York, visited Birmingham, and, after communicating with the principal rifle, bayonet, and sword manufacturers there, gave orders for as many of those articles as their respective manufactories were capable of supplying, [53] *the goods to be paid for on delivery to them at a place to be subsequently named, or on shipment. Messrs. Schuyler and Tomes made no concealment of the fact that these arms were destined for the American Government, and they intimated their intention of continuing unlimited orders for a period of two years. They took warehouses in Birmingham for the receipt of the arms when completed, and shipped them through the agency of Messrs. Baring Brothers and Messrs. Brown, Shipley & Co., of Liverpool. It appears from the returns made to Congress of arms purchased by the United States War Department up to December, 1861, that 8,650 rifles and 232 revolvers of English manufacture had at that time been supplied by Messrs. Schuyler, Hartley & Graham; but Mr. Schuyler is also believed to have acted as agent for the purchase of arms for the State of New York. Messrs. Schuyler and Tomes were soon followed to Birmingham by a Mr. Lockwood, of New York, who had entered into a contract for the supply of rifles, bayonets, and swords to the War Department at Washington. He also gave unlimited orders for such articles, acting, however, to some extent, in concert with Messrs. Schuyler and Tomes, and shipping the goods through the agency of the same houses at Liverpool. The effect of these orders was to raise the prices in the Birmingham gun-trade to the extent of 20 per cent.; indeed, the price of rifles rose from 52*s.* to 75*s.* each.[4]

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[1] Appendix to British Case, vol. vi, p. 162.
[2] Ibid., p. 154.
[3] Ibid., p. 155.
[4] Ibid., p. 158.

On the 4th of December, 1861, it was deemed expedient under circumstances then existing, as a temporary measure of precaution to prohibit altogether, by proclamation, the exportation of arms and munitions of war, and Messrs. Schuyler and Tomes countermanded their orders in consequence, the former proceeding to Liege, the latter remaining at Birmingham. The proclamation was practically revoked in the course of January, and formally on the 7th of February, 1862. While it was in force it, of course, operated equally against both belligerents.

It appears from the report of the commissioner on contracts for arms that, by the concurrent action of the Secretary of State, Assistant Secretary of War, and Secretary of the Treasury, M. Laumont Du Pont, of the firm of E. J. Du Pont & Co., of Wilmington, Delaware, had twice visited England, furnished with a credit of £82,700 7*s.* 1*d.* upon Messrs. Baring Brothers, and purchased and shipped saltpeter at a cost of £79,699 16*s.* 8*d.*[1] The large purchases of saltpeter which were made toward the close of November, 1861, drained the whole English market, and it was thought prudent to issue a proclamation prohibiting the exportation of that article, which was subsequently revoked at the same time as that respecting the export of arms. Mr. Adams wrote to Mr. Seward on the 24th of January, 1862—"The only event of any importance connected with American affairs that has happened during the last week is the revocation of the orders prohibiting the exportation of arms and munitions of war. This will release the large quantity of saltpeter in the hands of parties here, and will probably renew the activity of the confederate emissaries in forwarding supplies to the insurgents."[2] Mr. Seward replied, on the 13th of February—"It affords us pleasure to know that the inhibition against the exportation of saltpeter, which was so unnecessary, has been rescinded."[3]

Mr. F. B. Crowninshield is understood to have acted as agent for the States of Massachusetts and Ohio. His address in London was at the office of the United States consulate, No. 67 Gracechurch street. The Birmingham Small-Arms Company forwarded by his order 16,400 rifles to the care of Messrs. Baring Brothers, at Liverpool, for shipment to the United States, between the months of May and December, 1861. Mr. Crowninshield also ordered large quantities of arms and 10,000 sets of military accouterments from firms in London, which were forwarded and shipped from Liverpool and Southampton.[4]

Besides these purchases many were made by private firms, who sold or contracted to supply arms to the Government of the United States.

On the 14th of January, 1862, Mr. Donald McCay wrote to Earl Russell, stating that he had lately come to England with the intention of purchasing marine steam-engines and iron armor-plates for men-of-war ships, but that the manufacturers who could furnish them objected to enter into any contract on account of the possible risks in shipping these articles. He inquired whether Her Majesty's government would allow the shipment of them to the United States. Messrs. James Jack & Co., a manufacturing firm of Liverpool, wrote, on the 16th of the same month, stating that they were offered orders on behalf of the Government of the United States for the construction of gun-boat towers and armor-plates, and asking whether it would be considered improper for them, as British subjects, to undertake the execution of these works at the time. Both applicants were informed that there was not any impediment to their undertaking such works or shipments.[1]

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[1] Appendix to British Case, vol. vi, p. 173.

[2] Appendix to United States Case, vol. i, p. 521.

[3] Ibid, p. 523.

[4] Appendix to British Case, vol. vi, pp. 182, 189–191, 197.

The Liverpool, New York and Philadelphia Steamship Company [54] addressed Lord Russell *on the 31st of January, on the question of the exportation of arms to the United States. They said that, on the issue of the Queen's proclamation of the 13th May, 1861, they had given notice to all their shippers that they could not carry contraband of war. They had subsequently been asked to carry forward the cargo of the steamer Bremen, built in England, but sailing under the Bremen flag, and a competitor with them in the Atlantic trade, which they had engaged to do, but finding on the arrival of the cargo at Hull, *en route* for Liverpool, that it comprised about 600 cases of rifles, they refused to carry them. A somewhat similar case had occurred with goods from Antwerp. On their refusing to carry these goods they had received information from the Continent that, if they would not do it, the goods would be sent to London, and thence by railway to Southampton, whence there was no difficulty in shipping them by the Hamburg company's steamers, (built in England, but sailing under the Hamburg flag,) and they had reason to believe that this course had been regularly adopted, and that the arms they had refused to carry the day before were being shipped that day by another British steam-conveyance from Liverpool. They found that their own refusal had tended to prejudice them with their customers, and particularly with the United States Government, who had transferred the mail service from them to the German companies. The reply to the company, dated the 12th of February, merely referred them to the *Gazette* of the 7th of that month, whereby the temporary prohibition of the export of munitions of war had been formally removed.[2]

A statement made by Lord Russell to Mr. Adams, and the reply of the latter, are recorded in a dispatch to Lord Lyons of the 19th December, 1861, as follows:

> In regard to the export of arms and ammunition to the Confederate States, I had lately read the opinion of the attorney-general,[3] and believed it was in entire conformity with the provisions of the foreign-enlistment act: warlike equipment of a vessel was prohibited; the loading a vessel with arms and ammunition was not prohibited. But in point of fact a much greater amount of arms and ammunition had been sent to the Federal States, where there was no obstacle to the export or the import, than to the ports of the Confederate States, which were blockaded. Mr. Adams admitted this to be the fact, and said he had refrained from pressing a more rigorous compliance with the foreign-enlistment act for this reason.[4]

Lord Russell returned to the subject in a conversation which was reported by Mr. Adams to Mr. Seward on the 22d May, 1862.[5] Mr. Adams, in compliance with instructions from his Government, had pressed on Lord Russell the expediency of revoking the recognition of the belligerent status of the confederate government, and had mentioned, in connection with this subject, the irritation produced in the United States by the reports of supplies furnished by private persons in England to the confederates. Lord Russell said "that large supplies of similar materials had been obtained in England on the part of the United States, which had been freely transported and effectively used against the insurgents." "I answered," said Mr. Adams, "by admitting that at one time a quantity of arms and military stores had been purchased here as a purely commercial transaction, for the use of the Federal Army, but that I had early objected to this practice for the reason that it prevented me from pressing my remonstrances against a very different class of operations carried on by friends and sympathizers with the rebels in this island, and it had been discontinued. We had, indeed, purchased largely in Austria, but that government had never given any countenance to the insurgents." Lord Russell's views are given in a note to Mr. Adams of the 17th May, inclosed in this dispatch.

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[1] Appendix to British Case, vol. vi, pp. 159, 160.

[2] Appendix to British Case, vol. vi, pp. 160–162.

[3] This was, no doubt, in the case of the Bermuda. See Appendix to British Case, vol. ii, p. 138.

[4] Appendix to British Case, vol. vi, p. 159.

[5] Appendix to Case of United States, vol. i, p. 536.

It may be observed that the agents of the confederate government, if the correspondence presented by the United States is to be believed, had themselves at this time been drawing supplies from Austria, and that Major Huse had been endeavoring to ship ten batteries of Austrian field-guns at Hamburg, and was about to invest in 20,000 Austrian rifles then in the Vienna arsenal.[1]

Mr. Adams was, however, mistaken in supposing that the practice of buying arms in England for the United States Government had been discontinued.

Messrs. Naylor, Vickers & Co., of New York, Liverpool, and London, bought and shipped to the United States large quantities of small-arms. They were supplied from Birmingham alone with 156,000 rifles between June, 1862, and July, 1863. They acted very extensively as agents of the United States Government, and submitted to that Government large proposals from the Birmingham Small-Arms Company. The Assistant Secretary of War at Washington, in a letter addressed to [55] them on the 20th October, 1862, *directly sanctioned an arrangement for the supply of 100,000 rifles, and the acceptance of this order was duly notified to the Secretary of War by a letter from Birmingham, dated November 4, 1862. The arms were sent to Liverpool for shipment. In December, 1863, fifty 68-pounder guns were proved at the royal arsenal at Woolwich, at the request of Messrs. T. and C. Hood, and after proof taken away by Messrs. Naylor & Co., and shipped to New York. Mr. Marcellus Hartley, of the firm of Schuyler, Hartley & Graham, already mentioned, was also a large purchaser of small-arms in London during the latter half of the year 1862.[2]

The general results of these operations may be traced in the official returns of exports from Great Britain to the northern ports of the United States, published by the board of trade.

These show that, whereas the average yearly exports of small-arms to those ports for the years 1858, 1859, and 1860, were 18,329, they rose, in 1861, to 44,904; in 1862, to 343,304; and amounted, in 1863, to 124,928. These are the recorded shipments of small-arms; but there is reason to believe that other shipments, to a considerable extent, were made under the denomination of hardware. Of exports of parts of arms there is no record prior to 1862. In that year they were valued at £21,050; in 1863, they rose to £61,589; in 1864, they still amounted to £10,616; and the average for subsequent years has sunk to £4,249.

Of percussion-caps, the average export in the years 1858, 1859, and 1860, was 55,620,000; in 1863 it rose to 171,427,000; and, in 1864, was 102,587,000. Of cannon and other ordnance, the exports in the year 1862 alone were valued at £82,920; while the aggregate value of the exports for the other nine years, from 1858 to 1861, and from 1863 to 1867, was but £3,336.

The exports of saltpeter for the years 1858 to 1861 had averaged 248 tons yearly. The purchases for the United States Government raised the amount to 3,189 tons for the year 1862 alone. From 1863 to 1867 the yearly average has again sunk to 128 tons. In addition to the exports from England, there was shipped from India, direct to the northern ports of America, a total of 39,846 tons, between the years 1860 and 1866, both inclusive.

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[1] See Appendix to Case of the United States, vol. i, p. 539; vol. vi, p. 69.
[2] Appendix to British Case, vol. vi, pp. 188-193.

The amount of lead shipped, which had averaged 2,810 tons yearly, rose, in 1862 and 1864, to 13,148 and 11,786 tons respectively.

The exports of ready-made clothing, apparel, &c., also rose, in 1863 and 1864, to double the average amount, in consequence, as may legitimately be presumed, of the supplies required for the United States Army.

It is estimated that the extra supplies of warlike stores thus exported to the northern ports of the United States during the civil war represent a value of not less than £2,000,000, of which £500,000 was the value of muskets and rifles alone.

On referring to the published statistics of imports into the United States, a similar increase will be observed. The value of arms imported from England into the United States is there given for the years ending June 30, 1860 and 1861, at $281,998, and $257,055 respectively. In the succeeding year the imports of arms amounted to an estimated value of $1,112,098; in the year ending June 30, 1863, to $717,409; and in that ending June 30, 1864, to $409,887. But, in addition to these entries, there is a table given in the returns of duty-free imports, under the heading of "Articles of all kinds for the use of the United States." During the two years ending June 30, 1860 and 1861, no such articles were returned as imported from England; but in the years ending June 30, 1862 and 1863, amounts of $3,316,492 and $6,778,856 are entered under this heading; and in the two succeeding years the articles thus imported from Great Britain still reached the estimated value of $1,568,407 and $1,853,773 respectively. That a large proportion, if not the whole, of these imports consisted of materials for the supply of the military forces of the United States cannot admit of a doubt.[1]

We see then that, during the civil war, arms and military supplies of all kinds in very large quantities were purchased in England, France, Austria, and other neutral countries by the Government of the United States; that they must have exceeded in amount any supplies which could reach the Confederate States; that these purchases were of the most pressing necessity, especially during the earlier years of the war; that they were effected by agents employed by that Government, some of whom were officers in its military service; that arrangements were made for the regular shipment from England to the United States of the goods so purchased from time to time; and that the goods purchased in England were paid for through the financial agents of the American Government in England. In the sense, therefore, in which these [56] expressions are used by the *Government of the United States in its case, that Government had in England during the war a branch of its War Department and a branch of its Treasury—that is, persons employed by the War Department in selecting, ordering, and procuring arms and military supplies, and causing them to be shipped to America, and financial agents of the Treasury, through whom its payments were made, and who were provided by it with funds for that purpose. In the sense in which Great Britain is said to have become the arsenal and treasury of the Confederate States, she became the arsenal and treasury of the United States. Had the confederacy and its agents filled, in the foregoing transactions, the parts actually sustained by the

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[1] See returns, Ibid., pp. 200, 202.

United States and their agents, we should have a narrative differing in no material respect from the story of confederate purchases and shipments told in the American Case.

ARMS AND MILITARY SUPPLIES PURCHASED BY THE CONFEDERATE STATES.

Arms and military supplies purchased by the Confederate States.

The Government of the United States has not furnished the arbitrators with an account of the names and operations of the agents employed by it for the above-mentioned purposes during the war; and it has, therefore, been necessary to supply that omission, although the means of doing so possessed by Her Majesty's government are very imperfect. Of the operations of the persons employed by the other belligerent, the Government of the United States has, on the other hand, given a very long and circumstantial history, purporting to be drawn from the papers which came into its possession at the end of the war. It is not, and indeed it could not be, pretended that the correspondence extracted from these papers was in any way known to the British government. Nor has the Government of the United States furnished the arbitrators with any means of judging whether the letters are authentic, or the facts stated in them true, or the persons whose names purport to be attached to them (persons entirely unknown to the British government) worthy of credit. Her Majesty's government thinks it right to say that it attaches very little credit to them.

There is, however, no reason to doubt that the confederate government, during the whole course of the war, effected purchases of arms and munitions of war to a considerable amount through its agents in England, France, Austria, and elsewhere. And it is now well known that, as its financial agents for this and other purposes, it employed the mercantile house of Fraser, Trenholm & Co., which was established at Liverpool, in connection with a firm at Charleston. The circumstance is stated as follows in the Case of the United States: "Before or about the time the insurrection broke out, and, as the United States believe, in anticipation of it, this house (the Charleston house of John Fraser & Co.) established a branch in Liverpool, under the name of Fraser, Trenholm & Co. Prioleau was dispatched thither to take charge of the Liverpool business, and became, for purposes that may easily be imagined, a naturalized British subject."[1] Her Majesty's government finds, on inquiry, that Prioleau, in fact, settled himself as a merchant in Liverpool in 1854, and remained in England, except during a temporary absence of a few months, from that time till June, 1863, when he applied for naturalization, stating, in his application, that he had been a resident householder for eight years, had married an English wife, and was desirous of acquiring landed property in England, and residing there permanently.[2] What further motives for this step a fertile imagination might discover Her Majesty's government cannot say. The advantages conferred at that time by naturalization in England were the legal capacity to hold immovable property, and to register vessels as a British owner. None of the vessels, however, to which this inquiry relates, were registered in the name of Prioleau, nor in that of his firm. In truth, all of them, except the Shenandoah, with which the firm appears to have had nothing to do, had sailed long before Prioleau became a

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[1] Case of the United States, p. 220.
[2] Appendix to British Case, vol. v, p. 202.

British subject. The motives stated in the application were probably the real ones, since the applicant appears to have continued to reside in England.

It would be a waste of time to follow the Government of the United States into the details of the various shipments made from England on confederate account. Both belligerents were left free to purchase and ship munitions of war, and both availed themselves of that liberty. The suggestion that such transactions were in progress called for no inquiry on the part of the British government, and the transactions themselves, had they been known to it, would have called for no interference.

The same observation applies to the expedients for raising money which were adopted during the later years of the war. The Confederate States, being debarred by the blockade from exporting their produce to Europe, endeavored to procure funds in England, France, and elsewhere, by hypothecating stocks of cotton, stored for exportation, [57] and to be *delivered after the conclusion of the war. The agent employed in England for this purpose was a merchant resident at Liverpool. Other agents were employed in Paris. No action or suit at law founded on transactions of this kind could have been sustained in England, either by or against the confederate government; since it had not been recognized by Great Britain. But it was not the duty, nor was it within the legal power of the British government to prohibit or prevent them, as it could not have prevented its subjects from subscribing to the vast war-loans which were raised from time to time by the Government of the United States, and were largely held in Europe. Those who advanced their money to the Confederate States did so at the risk of losing it, if the confederacy should be overthrown, and they have lost it accordingly.[1]

Pressed by the difficulty of distinguishing between their own operations in Europe and those of the Confederate States in such a manner as to make it appear that the British government was bound to give free scope to the former and repress the latter, the United States appear to imagine that they have found such a distinction in two circumstances. One of these is, that the needs of the confederacy were, as they allege, more urgent than those of the Union; the former could only obtain their military supplies from abroad; the latter could manufacture some of theirs at home.[2] The other is, that the United States, having the command of the sea, could transport the goods purchased by them freely and openly, or (as it is expressed) "in the ordinary course of commerce;" while the confederates were obliged to "originate a commerce for the purpose"—that is, to get their goods transported by way of Nassau and Bermuda, which are commonly places of no great trade—and further to make use of those concealments by which the traffic in contraband of war, when not protected by a powerful navy, usually tries to elude the vigilance of the enemy's cruisers.

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[1] The principle is clearly stated by Heffter, section 148, in the passage cited below, (Annex A.)

It has been fully recognized by the United States. The following extract from a note of Mr. Webster's was cited and adopted by Mr. Seward in answering a complaint of the Mexican minister in 1862:

"As to advances, loans, or donations of money to the government of Texas, or its citizens, the Mexican government hardly needs to be informed that there is nothing unlawful in this so long as Texas is at peace with the United States, and that these are things which no government undertakes to restrain."—Appendix to case of United States, vol. i, p. 589.

[2] Case of the United States, pp. 310-312.

Are we then to understand that, according to the views put forward in the Case of the United States, the "strict and impartial neutrality towards both belligerents," which it is the duty of a neutral government to maintain, obliges it to find out which of the two stands in the greater need of supplies, and consists in lending aid, by measures of repression, to the belligerent whose force is the greater and his wants the less pressing of the two, and thus assisting him to crush more speedily the resistance of his weaker enemy? Her Majesty's government is unable to assent to this novel opinion, advantageous as it would doubtless prove to states which, like Great Britain, possess a powerful navy. To hold an even hand between the two; to leave the trade open to both equally or close it to both alike; to leave the stronger free to profit by his strength, and the weaker to elude, as best he may, the superiority of his enemy on the high seas, has commonly been regarded as the only course consistent with impartial neutrality, and this was the course steadily pursued by Great Britain.

The transportation of military supplies was equally a contraband commerce, whether carried on openly or covertly, from Liverpool or London or from Nassau. It is asserted by the United States that the contraband trade between England and Nassau was "covered by the British flag," and that this, coupled with the protection afforded by Her Majesty's government to the confederate agents in England, "deprived the United States of the benefit of their superiority at sea."[1] Her Majesty's government does not understand the United States as alleging either that any protection was afforded to the agents of the Confederate States in England which was not extended also to those of the United States, or that contraband trade under the British flag was protected against search and capture at sea. Both of these assertions would be unfounded: but the language employed is calculated to produce this erroneous impression on the minds of the arbitrators. The agents of both parties in Great Britain enjoyed alike that protection, and no more, which persons resident or commorant here derive from the laws under which they live. Ships carrying between Liverpool or London and Nassau military supplies destined for the Confederate States were not, in fact, protected by the British flag, but were left to be dealt with on the principles of international law, as administered in the prize-courts of the United States, equally with those bound directly for confederate ports. Her Majesty's government, with a powerful navy at its command, abstained from all interference, confining itself to a remonstrance, conveyed in very moderate terms, when there appeared reason to apprehend that [58] * the United States cruisers, in their eagerness to make prizes, might harass unduly the regular and legitimate commerce of Great Britain.

BLOCKADE-RUNNING AND THE NASSAU TRADE.

Blockade-running and the Nassau trade.

The sea-coast of the Southern States being blockaded, though the blockade was for a long time imperfect, importers of goods into those States were exposed, if the goods were contraband, to a double risk of capture, which increased or diminished according to the length of the voyage. The island of New Providence, from its comparative nearness to the blockaded coast, offered some special facilities for the traffic, and large quantities of goods were sent to it as the war went on, with a view either to their being sold in the island to customers buying for the southern market, or to their being forwarded direct to one or other of the blockaded ports. Havana and Cardenas, in the Spanish island of Cuba, were made use of for a like purpose, and a confederate agent is stated to have been resident there. In this there was nothing which the British government was bound or legally empowered to prohibit, nor was any such obligation incumbent on the government of Spain. Persons trading either with the Southern States or with those which adhered to the Union were free to use Nassau, as they were free to use any other port in the British dominions convenient for their purpose. Traffic of the former kind was difficult and precarious, while that of the latter kind was safe and easy, and could be carried on from Liverpool or Halifax with more convenience and security than from Bermuda or Nassau. But this difference imposed no special obligations on the British government in regard to either the one or the other.

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[1] Case of the United States, p. 312.

One tangible ground of complaint the United States believe themselves to have discovered in the circumstance that merchant-ships arriving at Nassau were able to break bulk there, and transship their cargoes without a *bona-fide* importation into the colony. It is represented that this became a constant practice with vessels transporting goods for the confederates; and the Government of the United States "asks the tribunal to find" that the permission to do it "was a violation of the duties of a neutral." That the tribunal is invested with no authority to decide this question, either in favor of the United States or against them, it is needless to say.

It is asserted by the United States that the permission was given (or, in other words, that a previously existing prohibition of transshipment within the limits of the colony was removed) by an act of the colonial government. In proof of this it relies upon an intercepted letter, purporting to be written by a confederate agent. That it was an indulgence granted, exclusively or especially, to vessels trading with the Confederate States, is not asserted; though, under the circumstances of the case, it might be expected to work principally in their favor.

No information of such an act on the part of the authorities of the colony ever reached Her Majesty's government. It was not complained of at the time either by the consul at Nassau or by the minister of the United States in London, although the fact that transshipments were taking place was at a later period mentioned as a grievance. From the general character of Mr. Whiting's correspondence, and from his activity in discovering injuries and affronts even where none existed, there can be no doubt that, had the permission been given, and had it possessed the importance which the United States now attributes to it, he would instantly have made it a matter of expostulation and complaint, and it would have been promptly brought to the notice of Her Majesty's government by Mr. Adams. But even the Government of the United States itself, which was in constant correspondence with Mr. Whiting, appears to have known nothing about the matter, and now produces, in support of a complaint which it regards as serious enough to demand a judgment from the tribunal, no evidence beyond a loosely-worded sentence occurring in a letter purporting to be written by a confederate agent; while of this letter, and the time at which it came into the possession of the United States, no better account is given than that it is one of a large number "captured at the taking of Richmond and at other times."

Her Majesty's government has now ascertained on inquiry that the statement is erroneous. The fiscal regulations of the colony prohibited the transshipment of goods within its limits unless the goods were landed for examination by the officers of customs. Goods so landed might be immediately reshipped from the same wharf for exportation in the same vessel, or in others, at the choice of the shipper. The prohibition (which existed only for fiscal purposes) might, in any case, be dispensed with by permission granted by the receiver-general. This permission had been customarily granted as a matter of course in the case of goods stated to be in transit, and it was accorded frequently during the war.

The first application was made on the 19th December, 1861, in [59] the case of the *Eliza Bonsell, a vessel laden, not with contraband of war but with an assorted cargo; and after a reference to the governor and council, it was granted, the receiver being satisfied that the goods could be examined on board as well as if they had been placed on the wharf.[1] No permission appears to have been granted in the case of the Gladiator, nor does it appear whether her cargo was or was not landed before exportation. The prohibition was not removed or modified, and no change was made in the regulations. Had it been removed, however, the fact would have had no importance, since there was nothing to prevent cargoes landed from being immediately reshipped and distributed into smaller vessels; and the authorities were not at Nassau, any more than at Liverpool, authorized to prevent the exportation or transit of articles contraband of war.

That cargoes were, in fact, frequently transshipped, either with or without an intermediate landing, Her Majesty's government has no doubt, though the statements made in the Case of the United States are in many instances not borne out, when compared with the documents produced in proof of them.[2] The Government of the United States has,

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[1] Appendix to British Case, vol. v, p. 30.

[2] To avoid this risk, it is said, (p. 223,) "it was resolved to send the purchases which might be made in England to Nassau in British bottoms, and there transship them into steamers of light draught and great speed, to be constructed for the purpose. * * * The first offer from Richmond that is known to have been given for such a shipment is dated the 22d of July, 1861."

The passages referred to as authorities do not show any such system. The letter from Walker to Huse & Anderson of July 22, 1861, suggests that a number of small vessels should be secured under British colors and with British clearance, laden with arms and convoyed by the armed vessel MacRae, which had been placed by the secretary of the navy at the disposal of the war department and was to be sent to England for the purpose. The vessels might make the port of Nassau or some other port equally favorably situated, whence they might clear with probable safety for the coast of Honduras or of Yucatan, and enter upon the coast either of Florida or Louisiana. Nothing is said of transshipment at Nassau. The Gladiator, which was the first vessel that arrived at Nassau with contraband of war on board for the Confederate States, (December 9, 1861,) had originally orders not to land her cargo. It was not until after she arrived at Nassau that it was decided to distribute it into smaller vessels. (See Appendix to Case of the United States, vol. vi, p. 56, where the idea of transshipment is spoken as a last resource, and Mr. Benjamin's order to Captain Maffit, p. 57, also Mr. Heyliger's letter, p. 58, which acknowledges the receipt of orders to transship.)

The letter from Huse to Gorgas, March 15, 1862, ib., p. 69, besides being long subsequent in date, does not speak of any regularly established plan for transshipment, although he remarks on the difficulty of uniting in one vessel the qualities necessary for crossing the ocean and for running the blockade. In consequence of this, Major Huse is "quite at a loss what destination to give to the Bahama." The next shipment he means to send to Havana.

Huse (at Liverpool) was not directed to send the cargoes to Nassau, but to some port in Cuba, "to care of our agent, Mr. Helm, and we can get them away with almost entire certainty by breaking bulk there." (Ibid., p. 68.)

The cargo of the Economist was not transshipped. (Ibid., p. 71.)

That of the Southwick was only transshipped on account of the amount of demurrage to be paid under her charter, while she was waiting for an opportunity to run the blockade. (Ibid., p. 73.)

As to the existence of "private ventures," it seems that most of the arms and supplies, mentioned in the correspondence in vol. vi, were contracted for by the confederate government, but it by no means appears, nor is there reason to believe, that all however, omitted to inform the arbitrators of the means which were adopted by itself, as a belligerent power, to extinguish the traffic with the South, of which it complains. These means consisted in a rigorous extension of the belligerent right to capture neutral vessels on the high seas for the conveyance of contraband and for intended breaches of blockade, an extension previously unknown to international law. Before this war, it had been commonly assumed that, where a neutral vessel was bound from one neutral port to another, a prize-court would not inquire into the destination of the cargo. The American courts introduced the principle that, if sufficient evidence could be discovered (and the evidence deemed sufficient was often very slight) of an intention that the cargo should ultimately be delivered at a port of the belligerent, the cargo, and in some cases the ship also, became liable to condemnation. Goods, therefore, on the voyage between a British port and Nassau were equally liable to capture with goods on a direct voyage from Nassau itself or from Liverpool to a southern port, if the prize-court had any reason to suppose that to a southern port they were intended ultimately to go, and not to the Nassau market for *bone-fide* sale there. And the ship shared the fate of the cargo, unless there were reason to believe that the owners were ignorant of the ulterior destination of the latter, and had not hired their vessel with a view to it.

These decisions, to which no opposition was offered on the part [60] *of Her Majesty's government, destroyed the advantage which the proximity of a neutral port offers to a blockade-runner, in diminishing his risk of capture by diminishing the length of his voyage. The only advantage which remained was that of transferring the cargoes, whether by means of a sale in the market or otherwise, to smaller vessels of lighter draught and greater speed, which could make their way into the blockaded ports, not, however, as it appears, by means of the inland waters along the shore, (which were chiefly used during the first year of the war,) but by running past the blockading-vessels. In truth, when the blockade of these ports became really effective, the value of a neutral port at the distance of a two days' voyage was lost to the blockade-runner; it was valuable to him only as long as they were not effectually blockaded. To assist the blockade, however, was not the duty of the neutral government.

FALSE IMPORTANCE ASCRIBED TO THE PROCLAMATION OF NEUTRALITY.

False importance ascribed to the proclamation of neutrality.

In the Case of the United States some special importance appears to be ascribed to the fact that the transport of contraband of war and breaches of blockade had been denounced as unlawful in that proclamation of neutrality to which the American Government takes so much exception. It can scarcely be necessary to expose so transparent an error. The proclamation of neu-

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the vessels loaded with them were chartered by confederate agents. Isaac Campbell & Co. contracted to deliver the arms sent by the Columbia and Sylph to the Confederate States, and tried to get off their bargain. (Appendix to Case of the United States, vol. vi, p. 88.) Part of the Herald again is mentioned as reserved for private cargo, p. 95.

The information possessed by the United States Government, and communicated to Her Majesty's government at the time, is given in vol. i of the Appendix to the Case of the United States. Mr. Adams in December, 1862, communicated a letter from Mr. Morse, United States consul in London, giving an account of the system pursued. He says that during the earlier part of the war, the trade was carried on by agents, but at that time by British merchants on their own account, in steamers chartered by them or freighted by private speculators.' (Vol. i p. 731.)

trality did not create, nor purport to create, any new prohibitions. In England the sovereign cannot, by proclamation, either enact laws or abrogate them; all that he can do is to make public the provisions of existing laws, and enforce them in such a manner as may be necessary. The effect of this proclamation was solely to warn British subjects that they would incur, by doing certain things, penalties imposed by the law of nations, against which their government would not protect them, and, by doing certain other things, penalties imposed by the municipal law of Great Britain, which the government would enforce against them. But Her Majesty neither did nor constitutionally could undertake, by issuing it, any international obligations toward either belligerent beyond such as are common to all neutral powers. It has been the practice in the United States to issue proclamations, different, perhaps, in phraseology, but in substance the same. In these, obedience to the law of nations is "enjoined;" the carriage of contraband and breaches of blockade are denounced as "misconduct," and warning is given that persons "so misconducting themselves" will do it at their peril. But the American Government does not appear to have understood that by these warnings it bound itself to prohibit or even to discountenance the acts thus denounced, or to interpret with any peculiar strictness its own neutral duties under the law of nations.[1]

KNOWLEDGE OF FACTS IMPUTED TO THE BRITISH GOVERNMENT.

Knowledge of facts imputed to the British government.

It is not material to pursue the question how far either the transactions of the confederate government and its agents, or those of the Government of the United States and its agents, in relation to the purchase and transportation of arms and munitions of war, could have been known, by inquiry, to the government of Great Britain. Had they been known to it, no obligation to prevent them would have arisen; no obligation, therefore, arose to prosecute inquiries respecting them. It is said[2] that the appointment of the confederate agents, their acts, and the powers intrusted to them, were open and notorious, and that, "if there was any pretense of concealment at the outset, it was soon abandoned." But it appears from the very documents relied on, that these agents took the greatest pains to keep all the details of their proceedings secret.[3] "The United States ministers to England, France, and Belgium," wrote one of them in July, 1861, "have been very active in their endeavor to discover what the agents of the confederacy are effecting. They have agents employed for no other purpose, and it is of the highest importance that these should be kept in ignorance of all the acts of any agent of the confederacy. Any person that has ever become acquainted with Europe from personal experience knows how difficult it is for a stranger to keep his actions secret when spies are on his path." And, in March, 1862, the same agent writes,[4] "I beg to suggest to the department the importance of everything relating to these shipments being kept in secret," adding, as before, that his "steps are narrowly watched by the agents of the United States." Her Majesty's government did not resort, and

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[1] See President Washington's proclamation in 1793, (Appendix to British Case, vol. v, p. 237,) and Mr. Jefferson's subsequent letter, referred to above, p. 49, and President Grant's proclamation, issued at the commencement of the late war between France and Germany. (Appendix to Case of United States, vol. vii, p. 43.)

[2] Case of the United States, p. 221.

[3] Appendix to Case of the United States, vol. vi, p. 34.

[4] Ibid., p. 70.

[61] it certainly was not bound to resort, to the *means which are here stated (whether truly or not) to have been employed by ministers of the United States; such knowledge as could be derived from secret information or intercepted letters it did not possess; and, in the unauthenticated statements which Mr. Adams, withholding the names of his informants, furnished from time to time to Earl Russell, it had no adequate ground for inquiry or action.

It may, however, be convenient, since the Government of the United States has charged Earl Russell with having neglected to make inquiry, and contented himself with announcing a "condition of affairs at Nassau" which was "imaginary,"[1] to state what was actually done by Earl Russell upon the receipt of Mr. Adams's representation, what has been previously done, and what were the facts existing at the time.

The first dispatches received by the government from the colony relating to vessels under the confederate flag, or engaged in trade with the Confederate States, were dated the 21st of June and the 8th of August, 1861, and forwarded representations which the administrator of the Bahamas had received from the United States consulate at Nassau, respecting the arrival at that port of merchant-vessels under the confederate flag, and the refusal of the masters to deposit their papers at the consulate, To these the administrator had replied that the facts alleged did not justify any interference with the vessels. A dispatch was also received from the governor of Barbados, reporting the pretensions which had been advanced on the same subject by the United States consul there, and the course of conduct which the governor meant to pursue. These dispatches were referred to the law-officers of the Crown, who reported that the governor had, in their opinion, taken a correct view of his position and duty, and might be instructed that no foreign consul had any jurisdiction or power to seize any vessel (under whatever flag) within British territorial waters. With respect to supplies, even of articles clearly contraband of war, (such as arms or ammunition,) to the vessels of either party, the colonial authorities, in the opinion of the law-officers, could not interfere, unless anything should be done in violation of the foreign-enlistment act; and, as regards the supply of articles *ancipitis usus*, (such, for instance, as coal,) there was no ground for any interference whatever. Instructions were sent in this sense to the governors of the British West Indian colonies on the 15th of November, 1861.[2]

On the 1st October, 1861, Mr. Adams addressed a note to Lord John Russell, forwarding a copy of an intercepted letter from a Mr. P. Baldwin, living at Richmond, Virginia,[3] "in the service of the insurgents," addressed to Mr. Adderly, of Nassau, from which he said that it appeared that Nassau had been made to some extent an entrepôt for the transmission of articles contraband of war from Great Britain to the ports held by the insurgents. It would be a great source of satisfaction to the Government of the United States, Mr. Adams said, to learn that Her Majesty's government felt itself clothed with the necessary power to prevent the exportation of such contraband for the colonies for the use of the insurgents, and that it would furnish the necessary instructions to the local authorities to attain that end. Mr. Baldwin's letter stated that the secretary to the navy of the Confederate States had ordered from England, to be shipped to Nassau, a quantity of arms and powder. Mr. Baldwin had recommended that they should be consigned to Mr. Adderly, asked him to take good care of them, said he would be with him soon, and would expect his aid in transshipping them. A copy of this communication was sent to the colonial office on the 8th of October, with a request that inquiry might be made, and Mr. Adams was so informed.

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[1] Case of the United States, pp. 232, 234.
[2] See Appendix to British Case, vol. ii, p. 89.
[3] Appendix to Case of the United States, vol. i, p. 520.

The reply of the administrator of the Bahamas, dated the 20th November, 1861, was received at the colonial office on the 31st December, 1861. The administrator forwarded a letter from Mr. Adderly, expressing his surprise that the United States Government should have countenanced the intercepting of his letter, and stating that no warlike stores had been consigned to him from Great Britain for transport to the Confederate States or to any other place. With this was inclosed a report from the receiver-general at Nassau, to the effect that no warlike stores had been received at that port, either from the United Kingdom or elsewhere, neither had any munitions of war been shipped from Nassau to the Confederate States. The substance of this information was conveyed to Mr. Adams in a note from Lord John Russell on the 8th of January, 1862.[1] It was not, as stated in the Case of the United States, "the announcement of an imaginary condition of affairs;" it was the simple truth at the time when the dispatch was written. The first arrival in the port of Nassau of a vessel suspected of being loaded with arms and munitions of war for the Confederate States was on the 9th of December, 1861. The vessel in question was the Gladiator.[2]

[62] *It was well known, undoubtedly, to the colonial authorities and to Her Majesty's government that, during a considerable part of the time for which the war lasted, much traffic was carried on between England and the islands of New Providence and Bermuda, and from thence to ports of the Confederate States; and the colonial newspapers during that period contained a multitude of advertisements offering for public sale the cargoes of the vessels arrived or expected to arrive from various English ports, from Havre, New York, and other places. Foreign goods of all kinds being shut out from the Confederate States by the blockade of an immense sea-board, it was inevitable that such a commerce should spring up, and should be busily carried on by speculators and adventurers.

It was known also that some part of this trade consisted of arms and munitions of war. But these facts did not call for inquiry. It was not the duty of the British government to inquire who were interested in particular cargoes, or by whom particular vessels were owned or chartered. A vessel owned, or chartered, or controlled, wholly or in part, by a belligerent government, and employed in conveying merchandise from and to foreign ports, is liable to capture by the other belligerent as enemy's property, or as employed in the enemy's service, but she is not a transport in the ordinary or proper sense of the word, even though part of the cargo may consist of articles contraband of war. To repress the trade, so far as it was not a *bona-fide* trade between neutral ports, carried on in neutral ships, was the business, not of Great Britain, but of the United States; and they did repress it accordingly, by a strict and rigorous exercise of the belligerent rights of blockade, visit, search, and capture.

In truth, however, although it is several times implied, and once asserted, that the British government had been repeatedly informed, and repeatedly furnished with evidence, that some of these vessels were the property of the confederate government, and ought to be regarded as "transports," no representation was ever made on this point till the month of January, 1864, when some copies of letters taken from a prize were sent by Mr. Seward to Mr. Adams. Nor was this information furnished as a ground for legal proceedings. Mr. Seward only intimated that, with the knowledge thus acquired by this Government, "the policy pursued by the United States in regard to assaults of the blockade would be modified.[1] It supplied, indeed, no evidence at all, except against two vessels which had been already captured. In fact, it was not known then, and it appears to be but imperfectly known even now, when the confidential papers and documents of the confederate government have fallen into the hands of the Government of the United States, what vessels the confederate authorities had control over or interest in at different times, whether as owners, charterers, or freighters, and how far their control or interest was shared by private speculators.

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[1] Appendix to Case of the United States, vol. vi, p. 57; Appendix to British Case, vol. v, p. 26.

[2] Case of the United States, p. 226.

The Case of the United States abounds throughout with assertions to the effect that Her Majesty's government must or ought to have been aware of all, and more than all, that became known during the later period of the war, or is known now. What might possibly have been discovered by an incesssant and indiscriminate use of every means by which secret information may be obtained, Her Majesty's government cannot say; but a slight experience of administration, a very slender acquaintance with judicial records, is sufficient to convince any one that, in matters of this nature, secrecy or disguise, where there is any motive for securing it, is not difficult of attainment; and that a lurking and undisclosed interest in a ship, a cargo, a contract, a trading-speculation, is a thing easy to conceeal, and hard to detect. Such experience can hardly be quite unknown to the Government of the United States.

During the whole period of the civil war the sea was open to the United States, and they had access, in common with other nations at peace with Great Britain, to the workshops, markets, and sea-ports of this country. What military supplies they purchased here, how they paid for them, in what vessels and in what manner they transported them to America, were matters into which Her Majesty's government never deemed itself bound to make inquisition. The complaint they make against Great Britain is really this, that the liberty allowed to them was allowed equally to the Confederate States.[2]

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[1] Appendix to Case of the United States, vol. i, pp. 741, 745.

[2] The subjoined extract from the New York Times of September 21, 1870, shows the course pursued during the recent war between France and Germany:

"The steamer Lafayette, belonging to the Compagnie Transatlantique, sailed from this port for Havre yesterday afternoon, having on board a very large amount of ordnance and ordnance stores, together with upward of 250 French and Irish recruits, fully equipped and prepared to volunteer in the French provisional army against Prussia. Previous to the departure of the vessel, Mr. Johannes Roesing, consul for the North German States in this city, visited the United States district attorney's office in Chambers street, and demanded the seizure of the Lafayette, on the ground that she was to be used to carry a military expedition against a country at peace with this government. It was found that there did not exist sufficient legal cause for the detention of the steamer, and the German consul then made a complaint against 133 of her passengers. He charged the latter, on information and belief, with being an armed and organized company, intended for warlike purposes against the Prussian states, in violation of the neutrality laws. His affidavit was prepared by Hon. A. H. Purdy, assistant district attorney, and was sworn to before Commissioner Betts. The complainant was unable to furnish the names of the *émigrés*, including the leaders, and the warrants for their arrest were accordingly filled out with fictitious names.

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"After the German detectives announced their failure to recognize any of the expeditionary party, Mr. McKenzie took a passenger-list and used it in expelling from the

[63] *1. RESTRICTIONS ON COALING AT NASSAU.

2. ORDER OF 31ST JANUARY, 1862, IN RELATION TO NASSAU.

Restrictions on coaling at Nassau.

Her Majesty's government will not advert in detail to some minor complaints and inaccuracies which occur in this part of the Case of the United States.

Two complaints, however, remain in connection with the matters referred to in the foregoing pages, which are treated as serious by the United States, though in the view of Her Majesty's government they have nothing to do with the questions referred to the tribunal.

One of these is founded on the regulation enforced by the colonial authorities at Nassau, that a belligerent government should not be suffered to store coal at that port for the use of its armed ships of war; the other, on the orders subsequently issued by Her Majesty's government, whereby the ships of war and privateers of both belligerents were prohibited from entering the ports or waters of the Bahama Islands, unless by special leave of the governor, or under stress of weather.

The circumstances under which the first of these two complaints arose are succinctly stated in Earl Russell's note to Mr. Adams of the 25th

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vessel all those whose names were not on it. Precisely eighty-three Frenchmen lost their passage in this manner. These were all bound for the French army. Their passage-tickets were to have been given to them by the French committee of this city, but had not been purchased at the time of their expulsion. They were quite indignant on account of the agent's maneuver, and were loath to leave the pier, trusting that they might get on board at the last moment. Among the passengers who were purchasers of tickets, and who remained on the Lafayette, were the leaders of the volunteers, and over 250 *émigrés* are destined for their native land. No attempt was made by the deputy marshals to interfere with arms and ammunition on the steamer, consisting of 120,000 rounds and several thousand Remington rifles. Mr. McKenzie was extremely dissatisfied with the action of the North German consul, and intimated his intention of bringing the matter before the proper authorities. The last seen of the Lafayette was off the Battery, at which time she was fast steaming out to sea. It was confidently reported that she was joined in the lower bay by the French corvette Latouche Tooville, Captain Bassett, with four guns on board and a crew of eighty men.

"The Lafayette was to have sailed on Saturday last—her regular day—but was then detained by an order from the French minister of war at Paris, who desired that she should carry out certain munitions of war and supplies, intended, it is alleged, for the French army. Her mails were kept back until yesterday, and then left with the vessel. The supplies, &c., consisted of Remington breech-loaders, to the number of 6,000 cases—some persons say more—several million rounds of ammunition, a large number of revolvers and other small-arms, and a considerable quantity of provisions. She commenced taking in this portion of her cargo on Friday, and was engaged day and night to the hour of her departure, and even after she sailed a lighter arrived with cases of arms which came too late to be shipped.

"It is stated by some persons on the wharf, with one of whom our reporter conversed, that the cases have the marks of the ordnance officer at Governor's Island. It is not improbable that these arms were purchased of the United States Government, as Mr. McKenzie, the agent of the line, informed our reporter, on Monday, that this Government were fully aware of the purchase and proposed shipment of these arms, and offered no objection."

The New York and Havre line of steamers, of which the Lafayette was one, held at the time a contract with the French government for the carriage of the mails. In October, 1870, a telegram was received at New York from M. Crémieux, a member of the French provisional government, ordering that the steamers of this line should be held exclusively for freight to be forwarded on account of the government. Under this order the packets continued to carry arms and munitions of war in large quantities from the United States to France. It appears, further, from the recent trial at Paris of M. Peace, French consul-general at New York, who was charged with the management of the purchase and shipment of these arms, that four vessels, the City of Buenos Ayres, Concordia, Riga, and Arcadia, were chartered and freighted with arms, by Messrs. Remington & Sons, for the French government, and two others, the Erie and Ontario, by an agent of the French consul-general for the same purpose, thus becoming "transports" in the sense in which the word is used in the Case of the United

March, 1862.[1] It will be observed that two vessels arrived at Nassau laden with coal which had been shipped at Philadelphia by order of the United States Navy Department; that the United States consul desired to store this coal for the use of ships of war under the flag of his government resorting to the colony; that this was objected to by the [64] local authorities, and that the objection led to *remonstrances on the part of the consul and of the commander of the United States ship Flambeau, which arrived while the correspondence was proceeding. It was urged by the latter that both the United States ships James Adger and the confederate ship Nashville had been suffered to coal at Southampton, and that this was a precedent in favor of granting the facilities now asked at Nassau. It was pointed out in reply that the cases were not parallel. Those vessels were several thousand miles distant from their respective homes, and to them consequently coal was an article of real necessity, whereas the Flambeau was within a very short distance of the ports of her own nation—Key West, for instance—where all her necessities could readily have been supplied. In obtaining coal at Nassau, therefore, there could be no other object than that of enabling her to continue what was, in fact, to some extent, a blockade of the port.

Various complaints of the United States against Great Britain.

Restrictions on coaling at Nassau.

The commander of the Flambeau replied,[2] protesting against such a construction being placed on his presence, and declaring that he was strictly enjoined to respect the rights of neutrals.

It appears, however, from a letter addressed by the governor to the British commodore at Havana, dated December 12, 1861, that the Flambeau constantly kept her steam up ready for instant movement, and there was a report that she intended to cut out the Gladiator, or to

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States. No objection was, however, raised to their sailing by the United States Government. The New York Times of the 30th of March, 1871, gives the following statement of the supplies forwarded by these and other vessels:

"The steamship St. Laurent sailed yesterday with her last consignment of arms and munitions of war for France. She carried among her cargo 1,676 cases of cartridges, 574 cases of harness, 1,444 cases of rifles, 205 cases of bayonets, and 67 cases of projectiles. The whole cargo was valued at $708,955.50. This makes nineteen cargoes of arms sent to Havre since the war began, the previous shipments being as follows:

Date.	Steamers.	Guns.	Cartridges.	Value.
September 3	Pereire	2, 155	462, 500	$50, 196
September 20	Lafayette	15, 840	3, 955, 000	417, 633
October 4	Ville de Paris	45, 023	9, 424, 000	915, 487
October 20	St. Laurent	16, 923	10, 299, 880	562, 785
October 29	Pereire	104, 870	2, 164, 000	784, 575
November 2	Avon	58, 340	11, 500, 000	707, 000
November 7	Ontario	72, 540	17, 785, 552	1, 764, 655
November 15	Lafayette	50, 660	9, 538, 736	930, 354
November 28	Erie	120, 800	16, 818, 120	1, 744, 060
November 28	Ville de Paris	11, 760	12, 399, 320	1, 053, 205
December 13	Pereire	14, 100	8, 164, 000	636, 238
January 2	Concordia	25, 180	158, 751	834, 000
January 4	Lafayette	37, 000	4, 671, 000	754, 275
January 14	City of Buenos Ayres	8, 240	1, 317, 000	448, 400
January 21	Ville de Paris	26, 100	2, 887, 000	747, 451
February 6	Washington		2, 275, 820	421, 940
February 13	Riga			731, 390
March 1	Pereire		3, 160, 000	398, 776
Total		609, 531	117, 082, 379	13, 810, 779

It appears, from the official report of the Secretary at War, that the sales of ordnance stores by the Government of the United States in the year 1870–'71 amounted, in the aggregate, to $10,000,000.

[1] Appendix to Case of United States, vol. i, p. 346.

[2] Appendix to Case of United States, vol. vi, p. 51.

seize that vessel immediately after leaving the port.[1] The consul of the United States, in a dispatch to his Government of the following day, stated that "the captain of the Flambeau is watching intently the movements of these rebel steamers."[2] The consul notices that "an English man-of-war has arrived, and several more are telegraphed as in sight," and he does not doubt that every protection will be afforded to the Gladiator, and every means afforded to facilitate her escape.

The attorney-general of the colony advised the governor that, though it might be in accordance with the regulations issued by Her Majesty's government to suffer coal to be supplied to an armed vessel of either belligerent, putting into port under ordinary circumstances, and desirous of obtaining a supply of coal in the ordinary mode by purchase in the market, such was not the case of the Flambeau, or of the coal in question. He therefore advised that the restrictions placed on the use of that coal should be continued, and that reference should be made to the home government for instructions.

The dispatches reporting these facts were received at the foreign office from the admiralty and colonial office on the 15th and 16th of January, 1862, and the question was at once referred to the law-officers of the Crown. Their opinion was that the governor had acted properly in refusing to allow the proposed coal-depot to be formed at Nassau. The formation or permission of such a depot for a purpose so directly connected with belligerent operations would be inconsistent with the neutrality of Great Britain.[3]

One of the vessels laden with coal appears to have been sent back at once by the United States consul. The other, the Caleb Stetson, remained in the harbor with the coal on board, and does not seem to have suffered any injury from the serious leak previously reported by the consul, as rendering necessary the transshipment of her cargo to the Flambeau.[4]

[65] .* Representations on this subject were made by Mr. Adams to Earl Russell on the 24th of February, 1862. Lord Russell replied, on the 25th of March, explaining the governor's proceedings, and Mr. Adams, though apparently dissatisfied, did not pursue the subject.[5]

The attempts of the United States to form coal-depots for their cruisers at British ports were not confined to Nassau. They had simultaneously sent vessels laden with coal for the same purpose to Bermuda, (which was likely to prove a convenient station,) consigned in a similar manner to their consul there. The governor, on learning that the conduct of the authorities at Nassau in preventing such a depot had been approved, informed the United States consul that it had been decided not to allow the formation in any British colony, either by the Government of the United States or by that of the so-called Confederate States, of a depot for the use of their respective vessels of war.[6]

Orders of the 31st January, 1862, in relation to Nassau.

The orders of the 31st of January, 1862, issued shortly after the occurrences at Nassau, laid down general rules to be observed in all the ports of the United Kingdom, and of Her Majesty's colonial possessions, as to the admission of armed ships of either belligerent, the time during which they might be allowed to remain, and the conditions under which they might be suffered to receive coal and other supplies. These orders at the same time closed the ports and waters of the Bahama Islands to the ships of war and privateers of both belligerents. They will be referred to, as regards their general operation, in a later part of this Counter Case; and ample materials will be supplied for judging whether they were or were not fairly executed, and whether it was by confederate ships or by ships of the United States that the hospitalities of British ports were the more largely used.

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[1] Appendix to British Case, vol. v, p. 27.

[2] Appendix to Case of United States, p. 47.

[3] Appendix to British Case, vol. v, p. 31.

[4] Appendix to Case of the United States, vol. vi, pp. 46, 53.

[5] Appendix to Case of United States, vol. i, p. 346.

[6] Appendix to British Case, vol. v, p. 8.

In the definition of neutral duties produced in the earlier portion of the Case of the United States,[1] a definition which purports to lay down "principles" and "doctrines of international law," and to be "in harmony with the views of the best publicists," it is affirmed that "the ports or waters of the neutral are not to be made the base of naval operations by a belligerent." "Ammunition and military stores for cruisers cannot be obtained there; coal cannot be stored there for successive supplies to the same vessel, nor can it be furnished or obtained in such supplies." It might have been reasonably supposed, therefore, that the course pursued by the authorities at Nassau, in the case of the Flambeau and her coal-ships, would have merited the approval of the Government of the United States, instead of being denounced as a violation of neutrality. The restriction in question is not indeed commanded, as the Government of the United States supposes it to be, by any rule of international law, but it may be imposed by any neutral power which thinks fit to do, and was, under the circumstances of the case, clearly proper and convenient.

The same observation applies to the orders of the 31st January, 1862. It is undeniably within the competence of a neutral government to close, if it think fit, all its ports, or any selected ports within its dominions, to belligerent ships of war. This has frequently been done. Thus, in 1820, during the war between Spain and the Spanish-American Republics, an act of Congress was passed, on the recommendation of the President, by which it was enacted that no foreign armed ship should enter any other harbor than Portland, Boston, New London, New York, Philadelphia, Norfolk, Smithville, Charleston, or Mobile, unless in case of distress, stress of weather, or pursuit by the enemy. This act was to continue in force for two years. In determining to make such a selection, and in designating particular ports for the purpose, the neutral government has to consult its own judgment only. But where any particular port or place is, from geographical situation or local circumstances, liable to be made use of by both belligerents or either as a station or base for naval operations, it becomes a simple measure of ordinary prudence and precaution.

To prevent the Bahama Islands from being used for this purpose was the avowed intention both of the restriction on coaling enforced at Nassau and of the subsequent order. These islands were so near to the American coast that the liberty to resort to them could not be valuable to either belligerent for any other purpose, unless it were to the belligerent whose own harbors were under blockade, and to whom, therefore, the exclusion must necessarily be more unfavorable than to the other. What, then, is the grievance of the United States? It is, that the United States cruisers were precluded from using the Bahamas for belligerent operations. Nassau was frequently visited by blockade-runners, and was within a moderate distance of Charleston and Savannah; it was, therefore, a convenient station and port of call for cruisers employed to watch and capture blockade-runners. Thus it is explained that "further stay of the [66] United States *vessels of war was useless" when the expedient was adopted of sending in cargoes in light and speedy vessels. Further stay was useless, because the cruiser waiting in port could not overtake and capture these light and speedy vessels. If ships carrying contraband and other goods to blockaded ports in the Confederate States were suffered to repair to the colony, United States cruisers ought, it is said, to have been suffered to repair thither likewise for the purpose of watching for and making prize of those ships and their cargoes. That the port would in the latter case have been used as a station for hostilities, and a point of departure for naval operations, and that it was not so used in the former case, is a distinction which seems to escape the notice of the Government of the United States.

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[1] Pages 148, 167, 168, 169.

The rigorous definition of the duties of a neutral furnished in the third part of the Case of the United States seems to be forgotten in the fourth part. The stringent rules by which the abuse of neutral ports by belligerent vessels was to be prevented have now disappeared, and the measures adopted to guard against that abuse are reckoned among the cases "wherein Great Britain failed to perform her duties as a neutral."

*PART V.

THE SUMTER AND NASHVILLE.

Having examined the miscellaneous charges preferred against Great Britain, but not falling within the limits of the reference to arbitration, such as those which regard the traffic in arms and military supplies, Her Majesty's government now approaches that part of the Case in which the Government of the United States at length proceeds to specify the vessels to which its claims relate, the failures of duty which it alleges in respect of them, and the nature of the claims on account of those alleged failures of duty. The wide conceptions of neutral obligation which had been previously presented to the tribunal here assume a concrete form, and are made the basis of actual demands upon a neutral power; and we are thus enabled to understand what those conceptions really mean, to what lengths the Government of the United States is prepared (if we may judge from the Case) to carry them, and what is the code of international duty which it proposes to enforce against neutrals, and asks the arbitrators to sanction.

PART V.—The Sumter and Nashville.

The first vessels in the list are the Sumter and Nashville. There is no material dispute as to the facts relating to these two ships. Both of them were fitted out and armed for war in confederate ports, were there commissioned as public ships by the president of the Confederate States, and thence dispatched to cruise under that commission. Up to that time neither of them, so far as appears, had ever been in a British port. In respect, therefore, of the original outfit and equipment of these ships, the United States have found themselves unable to suggest any fault on the part of Great Britain, or to bring any charge against her. Nor is it suggested that either of them obtained men, arms, or other military supplies, or augmented or renewed in any manner her military equipment within British ports or waters.

THE SUMTER.

The history of the Sumter has been accurately related in the British Case. It will have been observed that she was a steamship, purchased in a confederate port about or soon after the time of the commencement of the war, by the navy department of the government of the Confederate States; that she had received a crew, and was being actively prepared for war before the end of April, 1861, and upward of a fortnight before the date of Her Majesty's proclamation of neutrality; that she put to sea as a commissioned cruiser of the Confederate States on the 30th June, 1861; that she entered in succession, during the period of her cruise, the Spanish port of Cienfuegos, the Dutch port of Saint Anne's, Curaçoa, the Venezuelan port of Puerto Cabello, the British port of Trinidad, the Dutch port of Paramaribo,

The Sumter.

the Brazilian port of San Juan de Maranham, the French ports of Port Royal and Saint Pierre, in Martinique, the Spanish port of Cadiz, and the British port of Gibraltar. In each of those ports she was received as a commissioned ship of war. At Cienfuegos, Curaçoa, Paramaribo, Trinidad, Maranham, and Martinique, she was suffered to renew her stock of coal and provisions. At Curaçoa she appears to have staid seven days; at Paramaribo, twelve; at Maranham, nine; at Martinique, fourteen; at Cadiz, thirteen.[1] The period of time which elapsed between the dates at which she was suffered to coal at various ports appear to have been as follows, namely, from Cienfuegos to Curaçoa, ten days; from Curaçoa to Trinidad, six; from Trinidad to Paramaribo, fourteen; from Paramaribo to San Juan de Maranham, six; from thence to Martinique, fifty-five; from Martinique to Cadiz, forty-two. As to the quantity of coal which she took on board, she appears to have obtained 100 tons at Cienfuegos, 120 tons at Curaçoa, 80 at Trinidad, 125 at Paramaribo, and 100 at Maranham.[2] At Martinique she received, by the written permission of the governor, a sufficient stock to carry her across the Atlantic. At Trinidad she had applied for leave to [68] purchase coal from the govern*ment stores, but this request was refused, and she procured it from private merchants. The question, whether she was properly received as a ship of war, or ought to have been treated as a pirate, was raised by the United States on two occasions before she touched Trinidad, (namely, on her arrival at Cienfuegos and Curaçoa respectively,) and twice afterward, namely, on her arrival at Maranham and Martinique, and in every case fruitlessly. The right of neutral powers to admit her to the ordinary hospitalities of their ports, and to receive her as a ship of war on the mere declaration of her commander, was upheld and defended in long and carefully reasoned state papers by the governments of Brazil and the Netherlands,[3] and was afterward as firmly maintained by France.

Of the prizes taken by the Sumter, eleven were captured before she put in at Trinidad; none between the date of her leaving Trinidad and that of her arriving at Paramaribo, where she took in fresh supplies of coals and provisions; two between Paramaribo and Puerto Cabello; three after leaving Martinique.[4]

It will have been observed that at Gibraltar the Sumter was disarmed and dismantled; her crew were dismissed; she was sold, sent to Liverpool, and never afterward used for war. She had arrived at Gibraltar before the issue of the orders of 31st January, 1862, which limited the period during which belligerent vessels of war were to be suffered to remain in British ports. Those orders, therefore, could not with justice have been applied to her. When she left Gibraltar she left it unarmed, and at the mercy of any United States ship which might fall in with her.

On these facts, the United States ask the arbitrators to find and certify that Great Britain "failed to fulfill the duties set forth in the three rules in Article VI of the treaty of Washington, or recognized by the principles of international law not inconsistent with such rules;" and they ask that, in considering the amount to be awarded to the United States, should the tribunal exercise the power to award a gross sum, "the losses of individuals in the destruction of their vessels and cargoes by the Sumter, and also the expenses to which the United States were put in the pursuit of that vessel, may be taken into account."[1]

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[1] Appendix to British Case, vol. vi, pp. 1, 69, 81, 103, 112, 116; also Semmes's "Adventures Afloat," pp. 139, 147, 154, 160, 181, 187, 197, 206, 210, 216, 232, 260, 297, 304.

[2] Appendix to British Case, vol. ii, p. 5; vol. vi, pp. 2, 69, 84; Semmes's "Adventures Afloat," p. 145.

[3] These dispatches will be found printed in full, Appendix, vol. vi, pp. 12, 29, 35, 75, 84, 92, 98.

[4] See list given in Appendix to Case of the United States, vol. iv, p. 473.

So far as Her Majesty's government is able to understand the grounds of this demand, (setting aside the accusation of "habitually insincere neutrality" against Great Britain,) they appear to be as follows:

"1. That the Sumter was furnished with an excessive supply of coal at Trinidad, which supply enabled her to inflict the subsequent injuries she did on the commerce of the United States."[2]

We have here an application of the novel principle asserted in the third part of the Case. The arbitrators had here been told that "if, in these days, when steam is a power, an excessive supply of coal is put into the bunkers" of a belligerent cruiser in a neutral port, the neutral government will, according to the general principles of international law, "have failed in the performance of its duty." They had been told that, in order to prevent this, the neutral government is bound to apply a "wakefulness and watchfulness proportioned to the exigencies of the case and the magnitude of the interests involved." The local authorities must, therefore, estimate with precision the quantity of fuel which will probably be necessary, taking into account the sailing qualities of the vessel, to bring her to her nearest port, and to watch with the utmost jealousy lest she should procure more. For any failure in this respect, compensation in money is to be paid to the other belligerent by the neutral nation. The arbitrators are asked to affirm by their award this supposed rule of international law, and, in a case where a cruiser, distant more than 1,000 miles from home, has purchased no more than eighty tons of coal in a neutral port, to charge the neutral nation with the value of all captures made by the cruiser, and the cost of fitting out and keeping at sea all vessels that may have been directed to look after her.

It must be conceded that this view of international law opens a sufficiently alarming prospect to neutral powers. Happily, it is as completely erroneous in principle as it would be intolerably unjust in practice.

International law sets no limit to the quantity of coal which may be obtained by a belligerent cruiser in a neutral port. There is no such thing, therefore, as an "excessive" supply. Whatever such a vessel may require for repairing or renewing her sailing or steaming power, may lawfully be furnished to her; supplies of arms or munitions of war, repairs or alterations of her structure or equipment, serving to augment her warlike force and directly applicable to that purpose, she may [69] not lawfully receive. The general *consent of nations has drawn this line, and it draws no other.[3] Even, however, if there had been any foundation for the pretended rule, what proof have the United States given that it was infringed? Where is the evidence that the supply of coal to the Sumter at Trinidad was more than enough to carry her home? There is none whatever. The Sumter procured coal at a port in a British colony, as she procured it before and afterward at Spanish, Dutch, Brazilian, and French ports; in fact, the quantity she received at Trinidad seems to have been less than she got at other places; and it is clear that each of those powers is, according to the view of the United States, equally liable, as regards this vessel, to the entire claim which they now make against Great Britain. If any additional fact could make the answer of Great Britain more complete, it would be the circumstance that, in that part of the Sumter's cruise within which the coal she obtained at Trinidad was exhausted, she made not a single capture.[1] The captures for which compensation is claimed were made four months afterward, with the aid of coal procured, not at Trinidad, but at Martinique.

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[1] Page 327.

[2] Page 324.

[3] The instructions of 1793 have already been referred to:

"Equipments in the ports of the United States of vessels of war in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful."

* * * * * * *

"Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful."

2. The remaining argument in support of this claim is, that the Sumter ought to have been compelled to leave Gibraltar, (where, according to the United States consul, he had himself made it impossible for her to procure coal for navigation;) and that she was transferred while in that port, by a sale which is alleged to have been fictitious, but which appears from an intecepted letter produced by the United States to have been real.[2] Whether it was fictitious or not, was a question into which it was not the duty of the British government to inquire, nor was it a matter of much importance to the United States. If the sale was real, the confederate government parted with the ship and got the money; if it was merely nominal, they got no money but retained the right to the ship. How the circumstance that she lay in port, disarmed and without a crew, from January, 1862, to February, 1863, or the sale of her in December, 1862, to a real or nominal purchaser, could have enabled her to make prizes in the year 1861, is not explained to the arbitrators. All her captures having been previously made, the United States suffered no loss in consequence of anything which happened after she entered the port of Gibraltar. Even if this had been otherwise, in what respect do the facts alleged by the United States involve any failure of neutral duty? Orders were issued by Her Majesty's government, on the 30th of January, 1862, that, if any ship of war or privateer of either belligerent should *after* the time when the orders should be first notified and put in force in the United Kingdom or in any colony or dependency of the Crown, enter any port, roadstead, or waters of the United Kingdom, or of any such colony or dependency, she should be required to depart within twenty-four hours, or, if in need of supplies or repairs, as soon as possible after the expiration of that period. The Sumter reached Gibraltar several weeks *before* these orders had been either notified or issued. The orders were therefore violated, (it seems to be argued,) to the detriment of the United States, by suffering her to remain in port even when disarmed and without officers or a crew. Her Majesty's government is unable to follow this train of reasoning. It cannot be admitted that this government was under any obligation to enforce orders different from those which it had made, and inflict on a vessel, actually in a British port, the injustice of subjecting her to the operation of an extremely stringent rule, of which she could have had no notice when she entered, and which, if enforced against her, would have exposed her to certain capture or destruction.

"The sale," it is added, "was a palpable evasion." "The purchase of ships of war belonging to enemies is held in British courts to be invalid."

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[1] Appendix to Case of the United States, vol. vii, p. 214.

[2] Ibid., p. 71.

It may be presumed that what the Government of the United States wishes to express is, that a purchase (*flagrante bello*) of a belligerent ship of war by a neutral, in a neutral port, has been held invalid. This is declared to be a "simple proposition." It is really very simple, and yet in the Case of the United States it seems to be misunderstood, so as to introduce a confusion as to the relative rights of belligerent and neutral.

The sale of a belligerent ship of war, cooped up by an enemy in a neutral port, has been adjudged in a prize court of that enemy to be invalid; that is, ineffectual to transfer the ownership of the vessel [70] from the belligerent to a neutral, so as to relieve *her from the risk of capture.[1] This was never denied by Earl Russell, nor is it questioned by Her Majesty's government. But the transaction, though *invalid* as against the enemy, is not *illegal;* it violates no law, and calls for no interference on the part of the neutral government. Within the neutral jurisdiction, indeed, it is, if not prohibited by the local law, a perfectly valid sale, conveying to the purchaser a title to the ship, which could be displaced only by a regular sentence of condemnation in the enemy's country. If, after the sale of the Sumter, the British government had protected or undertaken to protect her at sea, as a British ship, against capture by the United States, the latter would have had just cause of complaint. But Earl Russell, instead of undertaking to do this, expressly disclaimed, in his note to Mr. Adams of the 15th January, 1862, any intention of doing so. "Her Majesty's naval and military officers at that port (Gibraltar) have received instructions not to give any protection to that vessel beyond the waters of Gibraltar." He gave Mr. Adams all that Mr. Adams asked—certainly all that he had any right to ask.[2] The Sumter quitted Gibraltar unarmed and unprotected from capture. She was exposed to capture all the way to Liverpool. She was exposed to it when, as a freight-carrying vessel under the British flag, all her warlike fittings having been carefully removed, she left Liverpool for a port of the Confederate States. She appears to have escaped it only through the fault of the United States cruisers which had been directed to take possession of her; and, because these cruisers failed to execute their orders, Great Britain is now called upon to pay for the expenditure incurred in respect of them, as well as for prizes the Sumter had previously made when commissioned as a ship of war.

It may here be observed that, when the United States minister in London was arguing that the sale of the Sumter ought to be prohibited in Gibraltar, the United States minister at Madrid had admitted that it might be allowed to take place in Cadiz. In a conversation with M. Calderon Collantes, on the 10th of January, 1862, which Mr. Perry afterward reported to his own Government, the latter said, speaking of this vessel:

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[1] This, and no more, was decided by Lord Stowell, in the case of the Minerva, Robinson's Admiralty Reports, vi, 396. It is said in the Case of the United States (p 322) that, "after reflecting upon this simple proposition for more than five weeks, Earl Russell denied it." Earl Russell did not deny it; he pointed out the misapprehension of it into which Mr. Adams had fallen; and the decision that the Sumter was not to be protected, when out of British waters, had been announced and conveyed to the officers of the government at Gibraltar more than three months before. (See British Case, p. 19.)

[2] Mr. Adams had asked "the assistance of Her Majesty's government to prevent any risk of damage to the United States from a fraudulent transaction in one of her ports; or, in default of it, of declining to recognize the validity of the transfer, should that vessel subsequently be found by the armed ships of the United States sailing on the high seas." (British Case, p. 19.)

> If they did not choose to go out to sea again, as they had entered, they might stay under the protection of the Spanish flag; and indeed their ship, if she should be sold out of their possession into honest hands, or leave all her armament and munitions of war, laying aside all pretensions to being a war vessel or a privateer of the so-called Confederate States or of anybody else, returning really and honestly to her former condition of a merchant steamer, might perhaps be liable to capture by the Navy of the United States, but she might then be repaired in Cadiz without contravening the royal decree of June 17.[1]

THE NASHVILLE.

The case of the Nashville must fall with that of the Sumter. The supposed failure of international duty which is alleged against Great Britain in respect of the Nashville is merely this: that, having been armed and commissioned as a ship of war in a confederate port, she was, on three different occasions, admitted into British ports and suffered to coal there.

In the Case of the United States we are told that "she took on board," at St. George's, Bermuda, "by permission of the governor, 600 tons of coal, and this act was approved by Her Majesty's principal secretary of state for the colonies." By the "act" is probably meant the supposed permission of the governor. No act appears to have been done by the governor, and no permission asked or granted; but he appears (while refusing to assist the commander of the ship to obtain coal by purchase from the government stores) to have made no objection to his procuring it from private dealers, and to have placed no restriction on the quantity. No order imposing any restriction had then (October, 1861) been issued by Her Majesty's government, nor by any other [71] neutral power; *and no restriction was or is imposed by any rule of international law. No complaint as to the quantity supplied was made at the time. The amount actually shipped by the Nashville was between 400 and 500 tons.[2]

At Southampton the Nashville was allowed to coal, the United States ship Tuscarora being allowed to receive a supply at the same time. On her return to Charleston, she again touched at Bermuda, and obtained, from a British merchantman in that port, coal enough to assist her on her return voyage. The decision that depots of coal should not be formed in the island for the use of the cruisers of either belligerent, did not prohibit this act, as it did not afterward prevent United States ships of war from obtaining at Bermuda, on two or three occasions, like supplies when necessary. "She left," it is said, "under the escort of Her Majesty's steamer Spiteful." What is thus described as an "escort" was in truth only a necessary measure of precaution adopted by the admiral on the station. "As, when she sailed, there were several vessels in sight, some of which might have been United States, I thought it advisable," wrote Admiral Milne, "to send the Spiteful outside, to insure respect being paid to our territorial limits."[3]

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[1] See Appendix to British Case, vol. vi, p. 110.

[2] See Appendix to British Case, vol. v, p. 14.

[3] Appendix to British Case, vol. ii, p. 127; vol. v, p. 2. The following are the instructions which were given by Admiral Milne to the commander of the Spiteful on the occasion:

"You are hereby required and directed to put to sea forthwith, in the sloop under your command, and proceed outside on the coast of these islands, with a view of preventing the confederate steamer Nashville, now about to leave the harbor of Saint

Her Majesty's government has deemed it respectful, as well to the United States as to the arbitrators, to examine the claims made in regard to these two vessels, and the reasons which have been produced to justify them. But Great Britain may surely, with some justice, complain of being called upon to meet, before a tribunal of arbitration, demands as to which the sole difficulty consists in treating them as serious, and in discovering how the arguments employed can be imagined to lend them any support whatever.

George's, from interfering in any way whatever with vessels of any nation so long as they are within three nautical miles of the shore of the Bermudas and their reefs. As soon as the Nashville is out of sight, you will return to anchorage.

"Given under my hand, on board the Nile, at Bermuda, 23d February, 1862.
(Signed) "ALEX. MILNE.
"To W. C. F. WILSON, Esq.,
"*Commander of Spiteful.*

"By command of commander-in-chief.
(Signed) "S. T. SUCTER,
"*Pro Secretary.*"

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*PART VI.

THE FLORIDA AND ALABAMA.

In the Case of Great Britain, the facts relating to the Florida, Alabama, Georgia, and Shenandoah, were stated in considerable detail. The building of each of these vessels, her original departure from this country, and the circumstances under which she received her equipment, and was armed, manned, and fitted out for war, were presented to the arbitrators as accurately and fully as Her Majesty's government was enabled to present them by the means of information at its command; while so much of the documentary evidence, whether favorable to Great Britain or not, as appeared material to a just adjudication on the questions at issue, was included in the Case. The facts which were in the possession of the British government at the time when the events respectively took place, whether brought to its knowledge by the minister of the United States or ascertained by independent inquiry, were, in this recital, kept distinct from facts which did not become known till afterward. The general course of conduct pursued by the government, in respect of equipments or apprehended equipments of ships of war within its jurisdiction, was at the same time placed before the tribunal, and attention was invited to those cases in which the means of prevention employed proved effectual, as well as to those in which they failed.

PART VI.—The Florida and Alabama.

The method of statement adopted in the Case of the United States is, in some respects, different. Circumstances known at the time, and many others not known till afterward, are there arranged without distinction in chronological order, so as to form a consecutive story, while, at the same time, no clear line is drawn between facts which are substantiated and those which the Government of the United States merely thinks or suspects to be true. Assertions resting only on the belief of an American consular officer in a foreign port, on a report transmitted by him that they were currently believed there, or on information said to have been received by him from anonymous persons, are freely introduced into the narrative as if they were ascertained facts.

Her Majesty's government does not complain of this mode of statement, which has doubtless been adopted for sufficient reasons. But it manifestly imposes on the arbitrators the duty of distinguishing for themselves between allegations which are proved and allegations which are not proved, and between facts which are and facts which are not justly to be taken into account as supporting or contributing to support a charge of negligence against Great Britain. They have to be satisfied, not only that acts were done which it was the duty of this government to use diligence to prevent, but that such diligence was not in fact exerted; and of this they have to be satisfied, not by assertion only, but by proof.

It has been observed in the Case of Great Britain that, in countries where (as in Great Britain) the executive is subject to the laws, foreign states have a right to expect that the laws should be such as, in the exercise of ordinary foresight might reasonably be deemed adequate for the repression of acts which the government is under an obligation to repress, and, further, that the laws should be enforced and the legal powers of government exercised, so far as may be necessary for this purpose. But it was added that, where such laws exist, foreign states are not entitled to require that the executive should overstep them in particular cases, in order to prevent harm to foreign states or their citizens, nor that, for this purpose, it should act against the persons or property of individuals, unless upon evidence which would justify it in so acting if the interests to be protected were its own or those of its own citizens. The principle which these propositions convey is of supreme importance to all nations in which the paramount dominion of law is recognized, the protection which it secures to civil and political liberty valued, and the executive not intrusted with large and arbitrary powers. On no other terms, indeed, could such states undertake to subject themselves to any international obligations whatever. No constitutional state could reasonably be assumed to have engaged to break through or set aside its laws, in the interest of foreign nations, whenever an occasion [73] might arise for which the laws were found to have imperfectly* provided beforehand. It has been further shown that the law of Great Britain, as it existed at the time when these occurrences took place, were such as, in the exercise of ordinary foresight, might reasonably be deemed adequate for enabling the government to discharge its obligations as a neutral power. It has appeared, also, that the powers which the government possessed, to prevent fitting out, arming, and equipping within its jurisdiction of vessels intended for the naval service of the Confederate States, or the departure, with that intent, of vessels specially adapted within its jurisdiction to warlike use, were defined and regulated by law; that the law provided certain modes of prevention, and required, before authorizing the condemnation of a suspected vessel, that the facts alleged against her should be capable of proof; and that the government had in no such case any power of seizure or detention, except with a view to a subsequent condemnation in due course of law, and on the ground of an infringement of the law sufficient to warrant condemnation. By proof, it was added, in a British court of law, is understood the production of evidence sufficient to create in the mind of the judge or jury (as the case may be) a reasonable and deliberate belief of the truth of a fact to be proved, such as a reasonable person would be satisfied to act upon in any important concerns of his own. And by evidence is understood the testimony, on oath, of a witness or witnesses, produced in open court, and subject to cross-examination, as to facts within his or their personal knowledge. Testimony which is mere hearsay, as to the existence of common reports, however prevalent and however generally credited, or as to any matter not within the knowledge of the witness, is not admitted in an English court.[1] These rules, which in England have been deemed expedient for securing the due administration of justice, may not be regarded as necessary in some other countries. But there was clearly nothing in them which could be supposed to be inconsistent with the dictates of natural justice; and, this being so, it was the right of Great Britain to adhere to and apply them in all cases arising within her jurisdiction, as it would be the right of Italy, of Switzerland, of Brazil, or of the United States to apply respectively in corresponding cases their own rules of procedure and evidence.

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[1] British Case, p. 51.

While, therefore, the obligation to use due diligence in order to prevent certain acts from being committed within the jurisdiction of the sovereign is an obligation wholly independent of municipal law, it is at the same time incontrovertibly true that, in determining the question whether due diligence has been used in a given case, the municipal law of the particular country, the modes provided for enforcing it, the powers vested in the executive, the established rules of administrative and judicial procedure may be, and commonly are, matters which it is proper and material to take into account.

The failures of duty which the United States impute to Great Britain, in respect of the Florida, Alabama, Georgia, and Shenandoah, consist partly in an alleged want of due diligence in preventing the original equipment of those vessels and their original departure from Great Britain, and partly in the hospitalities afterward afforded to them in British ports, where, it is insisted, they ought to have been seized and detained.

THE FLORIDA.

The Florida.

The history of the Florida divides itself into three parts, the first ending with her departure from Great Britain; the second with her release at Nassau; the third including her subsequent equipment, her arrival at Mobile, and her cruise after leaving Mobile.

The first part of this history, as told in the Case of the United States, is as follows:[1] The Florida was built to the order of Bullock, an agent of the confederate government. The contract for building her was made with one manufacturing firm and sub-let to another. It was made in the autumn of 1861, and was completed by February, 1862. She waited for the arrival of Bullock and four other confederate officers, "who were to take commands in the vessels which were contracted for in Liverpool," and sailed soon afterward, consigned to Heyliger, a confederate agent at Nassau, or to Adderly & Co., merchants, resident there. Her armament was at the same time prepared at Liverpool, sent thence to Hartlepool, and shipped on board a steamer, called the Bahama, for Nassau.

"It was a matter," the tribunal is told, "of public notoriety that this was going on. All the facts about the Florida, and about the hostile expedition which it was proposed to make against the United States, were open and notorious at Liverpool." The inference is, that all the facts which are stated in the Case were, or ought to have been, known to Her Majesty's government; that the government knew, or ought to have known, of the contract with Bullock; that it knew, or ought to have known, of the arrangements for arming the ship, since these things were generally known in the place where the events [74] occurred. *Where is the proof of these assertions? Where is the proof that even the American consul at Liverpool, whose activity in hunting for secret information appears to have been indefatigable, and to whom every one resorted who had information to disclose, knew of the contract with Bullock, or of the dispatch, cargo, and destination of the Bahama? And if he knew them, why did he not either communicate his knowledge, and the proofs in his possession, to the British government, or himself lay an information on oath against the ship?

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[1] Case of the United States, pp. 332 *et seq.*

It is clear that Mr. Dudley himself was in ignorance of the facts which, in the Case of the United States, are asserted to have been open and notorious to all. His attention had been called to the Florida, then in the builder's yard, as early as November, 1861. On the 24th January, 1862, he writes that "she is reported for the Italian government;" but the fact of the machinery being supplied by Fawcett & Preston, and other circumstances, make him "suspicious," and cause him to believe she is intended for the South.[1] On the 4th February the circumstances are still "somewhat suspicious." "There is much secrecy observed about her, and I have been unable to get anything definite, but my impressions are strong that she is intended for the southern confederacy. I have communicated my impressions and all the facts to Mr. Adams, our minister in London." At that moment the ship was taking in her coal; and "appearances indicate," he wrote, "that she will leave here the latter part of this week."[2] He makes, however, no representation to the government, nor does Mr. Adams make any. On the 12th he writes to Mr. Seward that everything he sees and hears confirms him in the belief that the vessel is intended for the confederacy; but he mentions no fact, except that Miller (the builder) had said that Fawcett, Preston & Co. gave him the contract. Still no representation is made. On the 17th he has "obtained information, from many different sources," which "goes to show" that she is intended for the Confederate States. Nevertheless, the solitary fact mentioned is that Fawcett, Preston & Co. are said to be the owners, with the addition that advances are said to have been made to them and to Miller by Fraser, Trenholm & Co.[3] Afterward he tells Mr. Seward that he has "no doubt," and has "positive evidence," that she is "for the South;" and, on the 5th March, that two persons in the employ of Fawcett, Preston & Co., had said so.[4] But, up to the time when she left Liverpool, his correspondence mentions not a single circumstance proving, or tending to prove, for what purpose she was intended, beyond some rumors as to her probable movements, which turned out to be erroneous. With the "notorious fact" that she had been ordered by Bullock he is evidently quite unacquainted.[5] As to the Bahama, so far is he from being aware of the "notorious fact" that she was about to take out the Florida's armament, that up to the 6th March he is making fruitless inquiries about that vessel, and can obtain no information about her, or any vessel of that name.[6] Several days afterward he learns that she is loading with cannon and other munitions of war at Hartlepool, and "*will either run the blockade*, or land her cargo at Bermuda or Nassau, *and have it ferried over in smaller vessels.*"[7] He believes her, in short, to the last, to be merely a blockade-runner, laden with articles contraband of war, and has no idea of her having any connection with the Florida.

Here, then, we have Mr. Dudley's confidential correspondence with his official superior. We find him quite in the dark as to the main facts which are relied on in the case of the United States, and declared to have been perfectly open and notorious at Liverpool, but laboriously picking up scraps of secret information, till he arrives at a confident opinion, respecting the grounds of which he is silent. But it may here be observed, by the way, that Mr. Dudley, though he appears to have been an intelligent and painstaking officer, was often confident of facts as to which he was entirely mistaken.

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[1] Appendix to Case of the United States, vol. vi, p. 214.

[2] Ibid., p. 215.

[3] Ibid., p. 216.

[4] Ibid., pp. 220, 221.

[5] Mr. Seward had, however, informed Mr. Adams, in August, 1861, that Bullock was said to be in Europe, and to have contracted for ten war steamers, (vol. vi, p. 33.) According to the Case of the United States, Bullock was in the Confederate States from the autumn of 1861 until immediately before the Florida sailed, (p. 334.)

[6] Case of the United States, vol. vi, p. 222.

[7] Ibid., p. 223.

We now perceive what is the value of the assertion, so frequently occurring in the case, that facts alleged therein were open and notorious, and, therefore, must or should have been known to Her Majesty's government. In truth, these open and notorious facts do not appear to have been discovered till long afterward, even by the industrious researches of the Government and subordinate officers of the United States.

[75] *Let us now recall what was known to the British government. This has been fully and accurately stated in the Case of Great Britain.[1]

The first representation made to Earl Russell was received on the 19th February, three months after the time when Mr. Dudley's attention was first directed to the ship. We have seen that it conveyed no information whatever on which a government could act. Fawcett, Preston & Co., who gave the contract to the actual builder, were a firm carrying on an extensive trade. It was said that on a previous occasion they had been concerned in a shipment of arms for the Confederate States, and it was further stated that money had been advanced to them, and to the builder, by Fraser, Trenholm & Co. It is evident that these circumstances, even if they had been verified, could produce no more than a bare suspicion.

Mr. Adams, it is true, said that, should further evidence be held necessary, he would "make an effort to procure it in a more formal manner." All that Mr. Dudley knew was known to Mr. Adams. Does he, then, when the results of the inquiries directed by the government were communicated to him on the 26th February, more than three weeks before the sailing of the ship, hasten to furnish the government with the proofs which the latter had been unable to obtain for itself? No; he remains silent until the 25th March, after the ship has sailed. Either he had information on which the government could act and did not impart it, or he had none. It is not very material which branch of the alternative is true; but, from the fact that no information possessed by him at that time has ever been produced, as well as from the whole tenor of Mr. Dudley's correspondence, we may assume that the truth lies in the second.

It is to be borne in mind that this was the first case (with one exception) in which a representation of this kind was made to the British government. It cannot, therefore, be pretended that Mr. Adams was discouraged or deterred from furnishing information by any previous neglect or refusal to act on the part of the Government. The only case which had occurred before was that of the Bermuda, in which Mr. Adams, though he "believed" and was "morally certain" that the vessel was to be used for war, proved to be mistaken.[2]

What the government did on receiving Mr. Adams's representation is stated in the British Case. Inquiry was instantly directed, but no information whatever could be obtained tending to connect the vessel in any way with the Confederate States. She was declared by the builder to be ordered for a firm at Palermo, a member of which was registered, on his own declaration, as her sole owner, and had frequently visited her when building. She had on board no arms or military supplies. The statement, at page 242 of the Case of the United States, that she had guns on board, is erroneous.[1] Her first destination, as stated in her clearance, was Palermo, and her crew were nominally (and, as they evidently believed, really) hired for a mercantile voyage. On the one hand were the positive statements of the builder, the registered owner, and the collector of customs; on the other, the suspicion of Mr. Dudley that the vessel was still intended by her owner to pass, sooner or later, into the hands of the confederate government. But a suspicion is one thing, reasonable grounds of belief another; and the British government, while it would have been bound to act on a reasonable belief that there was a present fixed intention to employ her as a confederate ship of war, was neither bound by international duty nor empowered by its municipal law to act on a bare suspicion that she might pass into that employment.

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[1] Pages 53 *et seq.*

[2] Appendix to British Case, vol. ii, p. 133.

The circumstances that occurred between the arrival of the Florida at Nassau, on the 28th April, 1862, and her departure thence on or about the 7th August following, have been inaccurately and imperfectly stated in the Case of the United States, and, as Her Majesty's government believes, accurately in that of Great Britain.

It is not correct that the United States consul, soon after the arrival of the vessel at Nassau, "called the attention of the governor to her well-known character," and that the governor declined to interfere.[2] The United States consul, after mentioning the arrival of the ship, represented that it was believed and reported by many residents in the place "that she is being prepared and fitted out as a confederate privateer;" and he requested that some inquiry might be made to ascertain how far she was "preserving the strict neutrality" enjoined by the Queen's proclamation.[3] He was immediately answered that inquiries should be made. They were made accordingly, and the consul was informed (as the fact was) that no attempt had been or was being
[76] made to arm the ship. The governor did *not "accept the statement of the insurgent agents," of whom he knew nothing, and with whom he had nothing to do, but that of the mercantile firm to whom she was consigned, and who were the only persons known to have any connection with her, and the proper persons to refer to. She was not "permitted to remain at Cochrane's Anchorage" without effectual precautions being taken to prevent a violation of the law.[4] It is not correct that "a second request to inquire into her character was made on the 4th of June and refused." The consul, on the 4th June, inquired whether steps had been taken to ascertain her character, and was answered in the affirmative. The governor "had directed steps to be taken to ascertain whether there was anything in the equipment or character of the Oreto which could legally disentitle her to the hospitalities of the port."[5] She was not arrested on the 7th June, nor was she released on the arrival of Semmes in the island; nor does it appear that the Bahama was arrested, or that the latter vessel was ever made

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[1] This error is probably due to an oversight arising from a misconception as to the meaning of certain blanks in a common printed form of clearance. (See Case of Great Britain, pp. 56, 57.)

[2] Case of the United States, p. 341.

[3] Appendix to British Case, vol. i, p. 14.

[4] British Case, pp. 61, 62; Appendix to ditto, vol. i, pp. 16, 18.

[5] Appendix to British Case, p. 20.

the subject of any complaint. Lastly, it is said that the consul, finding his representations to the governor useless, "applied to Captain Hickley, of the Greyhound, and laid before him the evidence which had already been laid before the civil authorities. He answered by sending a file of marines on board the Oreto, and taking her into custody."[1] This statement is wholly and completely unfounded, and is shown to be so even by the documents referred to. Captain Hickley seized the vessel on the 16th, upon the complaint of the sailors, who had been defrauded by a deviation from the voyage for which they had been hired; and on the 17th he renewed the seizure, with the sanction and authority of the governor, who immediately gave direction that proceedings should be instituted against her in the vice-admiralty court of the colony.[2] On neither occasion does it appear that Captain Hickley had any communication with Mr. Whiting. The consul did, however, subsequently address to that officer a letter, which would alone have been sufficient to justify any government in withdrawing his exequatur, an impropriety for which he received a merited reproof.[3]

It cannot be denied, on the part of the United States, that the Florida was seized while at Nassau, on charge of a violation of the foreign-enlistment act; that proceedings were, by the governor's directions, instituted in the proper courts, with a view to her condemnation; or that, after a regular trial, she was ultimately released by a judicial sentence. But, in order to destroy or diminish the effect of these proceedings, attempts have been made, in the Case of the United States, to attack the character and integrity of the colonial authorities, and impute to the principal law-officer of the colony deliberate dishonesty in the discharge of his official duties. On the pretext that in other matters he had acted professionally as advocate for the mercantile house who were consignees of the vessel, he is accused of having, as counsel for the Crown, so conducted the case intrusted to him as to secure its defeat, from motives of private interest or partiality;[4] of having neglected to call witnesses who could prove the facts, and managed his cross-examination of witnesses for the defense so as to suppress important evidence; and, lastly, of having intentionally hurried on the trial before evidence could be obtained from England. "Her Majesty's government," the arbitrators are told, "evidently considered that it would be relevant and proper to show the condition of the vessel when she left Liverpool; and should it appear, as it did appear, in Captain Hickley's testimony, that at the time of her leaving she was fitted out as a man-of-war, with intent to cruise against the United States, then it would be entirely within the scope of the powers of the court in Nassau to condemn her for a violation of the foreign-enlistment act of 1819. Had the trial not been hurried on, such probably would have been the instructions from London."[5]

Her Majesty's government thinks it right to say that there is not the slightest foundation for these imputations. There is no reason whatever to suppose that the trial did not come on in regular course, or that the case was not properly conducted on the part of the Crown. That the counsel for the Crown should have refrained from calling witnesses whose interests were strongly on the side of the defense needs no explanation to any one acquainted with the rules of English judicial procedure, since, according to those rules, the party who calls a witness is in general precluded, should the evidence which he gives be unfavorable, from impeaching the witness's credibility; nor can he compel him to answer any questions which would expose the witness to a penalty, or to prosecution for any offense against the law. The evidence of Captain Hickley neither did, nor possibly could, prove anything as to the extent to which the vessel had been fitted out when she left Liverpool.

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[1] Case of the United States, p. 342.
[2] Appendix to British Case, vol. i, pp. 23, 27.
[3] Ibid., p. 28.
[4] Case of the United States, p. 344.
[5] Ibid., p. 347.

It is perfectly true (and was, indeed, explicitly stated in the [77] British Case) *that the exclusion of evidence relating to acts done while the ship was at Liverpool was, in the opinion of Her Majesty's government, an erroneous ruling on the part of the judge. But the question was at least open to reasonable doubt, and it can hardly be necessary to inform the arbitrators that it is not in the power of Her Majesty's government to "instruct" a judge, whether in the United Kingdom or in a colony or dependency of the Crown, how to decide a particular case or question. No judge in Her Majesty's dominions would submit to be so instructed; no community, however small, would tolerate it; no minister, however powerful, could ever think of attempting it.

In the following extract from a report transmitted by the administrator and attorney-general of the colony these charges are completely disposed of:

> The charges are ranged under the following heads, page 343: That the attorney-general hurried on the trial before evidence could be obtained from Liverpool; that he conducted the cross-examination so as to suppress evidence unfavorable to the Oreto, and that certain named witnessed who could have shown that the Oreto was built for the insurgents, and was to be converted into a man-of-war, were not called as they ought to have been; and there is a general charge prevading the foregoing, and otherwise specially stated, of misconduct on the part of the attorney-general.
>
> Taking these *seriatim*, they are as follows:
>
> First, that the trial was carried on before evidence could be obtained from Liverpool. The answer to this is, that the vessel was proceeded against only for acts of equipment alleged to have taken place within the limits of the Bahama Islands. It was considered, whether rightly or wrongly, that the point was settled by the decision in the case of the Fabius, (2d C. Rob., page 245,) which was an appeal from the identical court, the vice-admiralty court of the Bahamas, and in which it had been decided that vice-admiralty courts had no jurisdiction to take cognizance of offenses committed out of the limits of their local jurisdiction, and that prosecutions under the foreign-enlistment act were not within the sixth section of 2 Will. 4, c. 51, which gave an extended jurisdiction to that court in certain specified cases, a position which may be considered as affirmed by the legislative action which has been taken on the point by the British legislature in the vice-admiralty court acts, 26 Vict., cap. 24, section 13.
>
> This being the conclusion arrived at, it was not considered necessary, in fact it was never suggested, that evidence could be obtained from England; but it was considered that the evidence of the mate and crew of the Oreto, combined with that of Captain Hickley and the other naval officers, was sufficient to show the *animus* with which the vessel was dispatched from Liverpool and her adaptation for warlike purposes; and this is admitted in the case, as, at page 343, the following paragraphs are found: "The judge, in deciding the case, disregarded the positive proof of the character, intent, and ownership of the vessel." And again: "The overwhelming testimony of Captain Hickley and his crew was summarily disposed of." And again: "While thus ruling out, either as false or irrelevant, evidence against the vessel which events proved to be true and relevant, he gave a willing ear of credence to the misstatements of the persons connected with the Oreto;" allegations that completely relieve the prosecuting officer of the charges brought against him at page 344, and throw the onus of failure on the judge, thus producing in the short space of two pages contradictory accusations against two officers of the government, the one of which, if well founded, would afford complete refutation to the other.
>
> Secondly, that the attorney-general conducted the cross-examination so as to suppress evidence unfavorable to the Oreto when it could be done.
>
> This is a charge which can only be met with a positive and indignant denial. Whether the cross-examination was conducted skillfully or not is, of course, another question, which must be judged of from the examinations forwarded.
>
> Thirdly, the neglect to summon witnesses who could have given material evidence,

and especially the omission to examine Maffit, Heyliger, and Adderley. Now, if the allegations in the United States Case are well founded, each of these persons was *particeps criminis* in the equipment of the Oreto, and was liable to be proceeded against criminally for a misdemeanor, and, on conviction, to be punished by fine and imprisonment, and, therefore, they could not have been compelled to give evidence leading to the condemnation of the vessel for acts of equipment within the colony, which would necessarily have tended to criminate themselves, and, consequently, it never entered into the minds of the attorney-general or of Captain Hickley, who was in daily consultation with that officer, to attempt to examine those parties, nor any other persons in the supposed service of the Confederate States. The existence of such persons as Evans and Chapman, who are named at page 345 of the Case, was entirely unknown to the attorney-general, and also, it is believed, to Commander Hickley, who never named them to that officer. One important witness, and one only, was lost to the prosecution, namely Jones, the boatswain of the Oreto, who had originally given the information to Commander Hickley which mainly led to the arrest of the vessel. He disappeared before he could be examined, and was supposed to have been induced by persons in the interests of the vessel to go away.

Duguid, the master of the Oreto, was, as will be seen on reference to his examination, questioned on the point, but he particularly denied all knowledge of the movements of the man.

With the exception of Jones, every one was examined who could have been compelled to give evidence, and Jones was only not examined because he secretly removed himself from the jurisdiction of the court.

Another very great misstatement with respect to the trial of the Oreto is made at page 345. It is there stated that the cross-examination of Captain Hickley was conducted by a gentlemen who was represented to be the solicitor-general of the colony, but who in that case appeared against the Crown. From the foot-note (2) this statement would appear to have been made on the authority of Consul Kirkpatrick, and, if so, it proves that little reliance is to be placed on that person's statements. Mr. B. L. Burnside, a barrister of Lincoln's Inn, was the counsel referred to, and at the [78] time (1862) *he held no office whatever under the Crown; and the United States Government have, through the errors of their informants, confounded the case of the Mary or Alexandra, tried in 1865, with that of the Oreto in 1862. In May, 1864, Mr. Burnside, however, was appointed solicitor-general, and at the time of the seizure of the Mary he held that office, when, being employed in that case as counsel for the claimant, he cross-examined Captain Preston, of the British navy, a witness produced for the prosecution; but, on the fact becoming known to the governor that the solicitor-general was so employed, he was called on either to give up his brief or resign his office, and he chose to do the latter.

In concluding the remarks on this part of the Case of the United States, it is confidently submitted that the arrest and trial of the Oreto at Nassau was a *bona-fide* proceeding.[1]

The vice-admiralty court of Nassau was a court of competent jurisdiction; the authorities of the colony were bound to pay obedience to its decree; and, as soon as it was pronounced, the persons claiming the possession of the vessel were entitled to have her immediately released. She was released accordingly, and sailed from Nassau unarmed, having cleared as a merchant steamer, and with a crew hired in the port, and hardly sufficient to navigate her, on or about the 7th August, 1862. The hiring of seamen at Nassau could not have been treated as an offense against law, since there was nothing to show that they were intended for the service of the Confederate States. Nor does it appear that they were, in fact, enlisted for that service.[2]

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[1] Appendix to British Case, vol. v, p. 19.

[2] It is stated in the Case of the United States, as if it had some importance, that the Florida lay outside with a hawser attached to one of Her Majesty's ships of war. The simple explanation of this trivial fact is as follows: The Peterel, a Queen's ship, was then lying in the harbor, and two United States ships of war were also there. The commander of the Peterel, at the governor's request, crossed the bar to offer these vessels the customary hospitalities of the port, which they declined, proceeding soon afterward to sea. The Peterel remained anchored outside the bar, in consequence of the lateness of the hour or the state of the tide. A boat soon afterward came to her from the Florida, (then known as the Oreto, and under British colors,) with a request, of which the following account is given by the officer who was then in command of the Peterel:

"A man, who stated he was the master in command of the Oreto, said he was very short-handed, and wanted to anchor for about two hours to adjust his machinery, but

It is affirmed in the Case of the United States that the Florida, after quitting Nassau, was armed for war, by means of a vessel which accompanied her from that port, at one of the Bahama Islands, and, therefore, within British waters; and, in proof of this, several depositions are produced, purporting to have been made by common seamen and others who were hired to assist in the work. From these it would appear that, before the Florida sailed, a schooner, called the Prince Alfred, carrying as cargo some guns and ammunition, together with other supplies, put to sea from Nassau, as though with the design of running the blockade; that she was overtaken by the Florida about three hours after the latter had left the harbor, and that both vessels proceeded to a place called Green Cay, where the cargo of the Prince Alfred was transferred to the Florida, an operation which lasted several days. The latter (which up to that time had been known as the Oreto) then hoisted the confederate flag, and assumed the name under which she has since been known. The Prince Alfred did not for some time return to Nassau, her captain being apprehensive that she might be seized for a violation of the law in assisting to arm and fit out the Florida in British waters.

Her Majesty's government has not the means of either verifying or disproving the truth of this statement. Assuming it to be true, there can be no doubt that a violation of the sovereignty and neutral rights of Great Britain was committed by the commander of the Florida. But the fact that such a violation occurred does not argue negligence on the part of Her Majesty's government. It took place, indeed, in British waters, since the whole group or chain of islands known by the name of the Bahamas are held to be under the dominion of Great Britain. But of these islands, which number several hundred, and are scattered over a wide surface, all but a very few are desolate and uninhabited, and many are mere rocks or islets. Green Cay (which, if we may trust the testimony of the deponents, was the spot selected for this transaction) is a small, uninhabited island, lying sixty miles or more south of Nassau, on the edge of what is called the Great Bahama Bank, and visited, as Her Majsty's government believes, only by fishermen.

[79] *Neutral powers have never been held responsible for violations of their territory committed in remote and unfrequented places, where no effective control could be exercised; and it is certain that, over such a dominion as the Bahamas, no government could reasonably be expected to exert such a control as to prevent the possibility that acts of this kind might be furtively done in some part of its shores or waters.

The Prince Alfred sailed from Nassau as any vessel intended to run the blockade might have done, while the Florida was still lying in the harbor; and there appears to have been no circumstance within the

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if he anchored outside he had not sufficient crew to weigh his anchor, and begged I would assist him by lending him men. I declined lending him any men; but told him he might hold on astern of the Petrel, and I would give him a line for that purpose.

"About 6.30 or 7 p. m., having seen the Oreto fast, holding on by one of our hawsers, I went down to dinner; and when I came on deck again she was gone.

"I had told the master that she must go out of our way before the tide started.

"This small act of courtesy I considered a duty that I should have extended to any ship, British or foreign, and, until the receipt of your communication, never gave it a second thought; in fact, I must have thought it too trivial to mention in my letter of proceedings which at that time were full of matter of the greatest interest.

"In conclusion I may remark that the only reason I had for refusing to send men on board was in consequence of the prevalence of yellow fever in the merchant shipping at Nassau, and I had prohibited all communication, so far as practicable, with them."

knowledge of the authorities of the colony to direct special attention to the nature of her cargo, to disclose her errand, or furnish a reason for detaining her. No complaint on the subject was made before she sailed by the consul of the United States, though it is now alleged that the purpose for which she went was "notorious" in Nassau. Subsequently, on the 8th September, 1862, when the Prince Alfred was again at the port, the consul informed the governor that he had good authority for stating that this vessel had placed the Florida's armament on board her at Green Cay, and that the Prince Alfred's captain was again shipping men to be sent to the Florida. The governor replied that if sufficient evidence could be placed in the hands of the attorney-general to substantiate this allegation, he would direct a prosecution to be instituted against the captain of the Prince Alfred or others who might have been guilty of violating the foreign-enlistment act. Upon this communication the consul seems to have taken no steps whatever; and, although it has since appeared that he had previously procured a notarial declaration from some of the men employed on the Prince Alfred, the evidence thus obtained was never communicated or disclosed to the colonial authorities or to Her Majesty's government, until February, 1865. Captain Maffit had at that time arrived at Nassau in command of the merchant-vessel Owl, which had run the blockade, and the then United States consul made an application to the governor for proceedings against him on the ground that he had enlisted men in the colony for the Florida in 1862. This application was not received until after Captain Maffit had left Nassau, but the governor directed the attorney-general to communicate with the consul, and the declaration of 4th September, 1862, above referred to, (which contained no evidence of enlistment,) was then produced for the first time.[1]

The arbitrators are already aware that the Florida went from the Bahamas to Cuba, where she endeavored to ship a crew, and from thence (before making any prize or inflicting any loss on the United States) was carried by her commander into the confederate port of Mobile, escaping capture through the remissness or incapacity of the officer commanding the blockading squadron; that at Mobile she remained more than four months; that she was there fitted out and put in a condition for cruising; and that from thence she commenced her cruise. The crew which manned her during that cruise were enlisted at Mobile, and the greater number of them appear to have been transferred to her from a receiving-ship in that port. The history of this cruise has been briefly told in the British Case. It has been seen that she was admitted, during the course of it, into ports of the British colonies, of Brazil, and France; that at Brest she was suffered to remain during nearly six months repairing and refitting; and that she was ultimately seized and carried away from a Brazilian port by a gross violation of the neutrality and sovereign rights of Brazil.[2]

On the fact that she was permitted to enter ports within Her Majesty's colonial possessions, the United States have endeavored to support further complaints and further claims against Great Britain, for which there is no foundation whatever. It was not the duty of the British government to seize or capture the Florida when cruising under a commission from the government of the Confederate States; and the charges of partiality made in respect of this vessel are as groundless as those advanced in the cases of the Sumter and Nashville. It will, however, be for the convenience of the arbitrators that they should be furnished with a summary account of the hospitalities accorded in British ports during the course of the war to the armed vessels of both belligerents. This will be done in a subsequent section.

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[1] Appendix to British Case, vol. i, pp. 82–90.

[2] Case of Great Britain, pp. 67–78.

With respect to the case of the Florida, Her Majesty's government submit with confidence to the arbitrators, not only that negligence cannot justly be imputed to Great Britain, but that (even if this were otherwise) Great Britain could not be held liable for losses sustained by the United States in consequence of the operations of that vessel after she had entered the port of Mobile, had there completed her equipments and enlisted for the first time a sufficient crew, and had afterward sailed from that port to cruise against the shipping of the United States.

[80] *THE ALABAMA.

The Alabama.

The facts relative to the building, departure, and subsequent arming of the Alabama have been set forth in the British Case with a fullness of detail which renders any additional statements unnecessary; and Her Majesty's government will here refer to them so far only as may be required for the purpose of correcting erroneous assertions or mistaken inferences in the Case of the United States.

In respect to this ship, Her Majesty's Government does not dispute that, at the time when she sailed from England in July, 1862, she was, as regards the general character of her construction, specially adapted for warlike use, nor that the adaptation had been effected within British jurisdiction. The question for the arbitrators is, whether the British government had, according to the fair and just sense of those words, reasonable grounds to believe that she was intended to carry on war against the United States, and, having it, failed to use such diligence as any international obligation required to prevent her departure from Great Britain, or to prevent her equipment within its jurisdiction.

In respect of this ship also, as in respect of the Florida, it is insisted by the United States that the material facts proving her true character and the employment for which she was intended were notorious, and therefore either were or ought to have been known to Her Majesty's government, and that no proof ought to have been required from Mr. Adams. It is insisted, further, that not only proof was required, but "strict technical proof," such as would support a criminal prosecution under the foreign-enlistment act. The arbitrators are also told that, in this case and throughout the war, the British government and its officers "would originate nothing themselves for the maintenance and performance of their international duties," and "would listen to no representations from the officials of the United States which did not furnish technical evidence" sufficient for the purpose mentioned above.

These assertions are made use of to explain the fact that, although "before the vessel was launched she became an object of suspicion with the consul of the United States at that port, and she was the subject of constant correspondence on his part with his government and with Mr. Adams," no representation was made respecting her either to the British government or to its officers at Liverpool until the 23d June, 1862. Neither the fact which has to be explained, nor the explanation offered for it, appears to be supported by the evidence.

Among the circumstances alleged as proofs of an intention that the vessel should be employed in the confederate service are the contract between Bullock and the ship-builder, supposed to have been signed in

October, 1861, and the asserted facts that Bullock "went almost daily" on board of her, and "seemed to be recognized in authority," and that her officers were in England awaiting her completion, and were paid their salaries monthly at the office of Fraser, Trenholm & Co., in Liverpool.

For evidence that the Alabama was the subject of constant correspondence between the United States consul at Liverpool and his Government and its minister in London, the arbitrators are referred to the Appendix to the Case of the United States, vol. iii, *passim*."[1] They will discover that, before the date of Mr. Adams's first representation to Earl Russell, (23d June, 1862,) she is only thrice mentioned by Mr. Dudley in dispatches to Mr. Seward—namely, on the 4th of April, 16th May, and 18th June, 1862. On the 27th June he says that he has mentioned her "in two or three notes to the Department."[2] They will not (Her Majesty's government believes) find any letters addressed to Mr. Adams prior to that on which he founded his representation to Earl Russell, though there probably was such a letter, since she is there said to have been mentioned in "a previous dispatch."[3] The constant correspondence, therefore, which is mentioned in the case did not commence until after the vessel had made her first trial-trip, and was nearly ready to go to sea, and a very few weeks before she sailed, though Mr. Dudley's attention had been directed to her in November, 1861. The fact that Bullock "goes almost constantly on board the gun-boat, and seems to be recognized as in authority," first appears in a letter dated 9th July, 1862, addressed to the collector of customs at Liverpool; and the collector is, in the same letter, told that Bullock "is in Liverpool," and what is supposed to be his business there.[4] The facts that the contract for the ship was made with Bullock, and that confederate officers who were intended to serve on board of her were in Liverpool and receiving pay before she sailed, first appear in a deposition of one Yonge, sworn and communicated to Earl Russell, in April, 1863.[5]

It has not been shown by the United States that, prior to the time when Mr. Adams *laid a representation before Earl Russell, any [81] circumstances proving or tending to prove that the ship was intended for the Confederate States were notorious or generally known at Liverpool, or were or ought to have been known to the British government or any of its officers. Indeed, beyond a report that one of the workmen in Laird's yard had said so, no fact of this kind is found in any of Mr. Dudley's previous letters. Such a statement by a mere workman would not be evidence in any British court, nor is it consistent with probability that ordinary workmen in the yard would have any means of knowing or proving the real destination of the ship.

That the vessel was designed for a ship of war was doubtless not difficult to discover, but there was nothing in this to attract special observation. The building of vessels of war for the British government and for foreign governments or their agents had for many years formed a large part of the regular business of the great ship-building firm in whose yard she was constructed. It has been publicly stated by Messrs. Laird, and Her Majesty's government are now in a condition to prove it to be the fact, that shortly before the contract with Bullock was said to have been made, they were asked to send in plans and estimates for gun-boats and a floating battery to the Navy Department of the United States by a person who represented himself, and was believed by them, to be authorized by the head of that Department; and being (as they were) commercial men, having only commercial objects in view, they were perfectly ready to have supplied these articles to the United States, if it had been proposed to them to do so on terms which they considered sufficiently profitable.[1]

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[1] Case of the United States, p. 366.
[2] Appendix to ditto, vol. iii, pp. 1–3; vol. vi, p. 377.
[3] Ibid., vol. iii, p. 5; vol. vi, p. 376.
[4] Ibid., vol. iii, p. 18; vol. vi, p. 384.
[5] Ibid., vol. iii, p. 145; vol. vi, p. 435.

The assertion that a particular fact is "notorious" is one the truth of which there is no possibility of testing. It commonly means no more than that the fact is generally or by many persons believed to be true, which does not prove the truth of it (since a general belief may be, and often is, mistaken) and does not always make it even probable that proof can be obtained. If a general belief prevailed in Liverpool, while the vessel afterward known as the Alabama was in the builder's yard, that she was intended for the Confederate States, (and there is no proof whatever that any such general belief did, in fact, exist,) this would not have been a reasonable ground for calling on the government to seize or interfere with a ship which, for aught that was known to the contrary, was the property of private individuals, guilty of no violation of the law.

The phrase "technical evidence" is calculated to mislead. If it means such evidence as might be expected to satisfy an impartial tribunal that a violation of the law had been committed, it is true that the government held itself entitled, before seizing the Alabama or any other vessel, to have such evidence in its possession, or to have reasonable grounds for believing that it would be forthcoming before the trial of the case should begin. Open investigation before a court is the means appointed by law for sifting all accusations and distinguishing ascertainable facts from mere rumor; it is an ordeal that a British government which, in the exercise of the powers intrusted to it, seizes or interferes with the person or property of any one within its jurisdiction, must always be prepared to encounter, and it is clear that the sufficiency of evidence in an English forum can only be tried by principles recognized in England, as in an Italian, Swiss, Brazilian, or American forum, it must of necessity be determined by principles recognized in those countries respectively. But the assertions that the British government, throughout the war, "would originate nothing themselves for the maintenance and performance of their international duties, and that they would listen to no representations from the officials of the United States which did not furnish technical evidence for a criminal prosecution," are not only unfounded; they are opposed to facts stated in the Case and evidence of Great Britain and even in the Case and evidence of the United States. The arbitrators have already seen, from the statements laid before them, that every reasonable suspicion, whether communicated through the minister of the United States or derived from other sources, was immediately made the subject of inquiry; that this was in some instances done where no representation had been received from Mr. Adams; and that on every representation of his, though unaccompanied by evidence, it was done as a matter of course.

It is true, nevertheless, that in cases of this nature neutral governments ordinarily expect to receive information from the ministers or consuls of belligerent powers resident within their territories. These officials have the keenest incitements to vigilance in their national interest and official duty, and are more likely to be the first recipients of intelligence than the government or its officers.

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[1] Appendix to British Case, vol. v, pp. 204-219.

This has been the general practice of neutral governments, and [82] the arbitrators have *already seen that it has been followed by the United States. The Government of the United States has expected information to be thus furnished to it, and has expected also the information to be supported by proofs; and where the proof offered was not satisfactory, foreign ministers and consuls have been told that they were at liberty to institute proceedings themselves.[1]

Let us now briefly recall the facts, of which the arbitrators are already in possession, and which show what the conduct of the British Government and its officers in relation to the Alabama really was.

On the 24th June, 1862, Earl Russell received the first representation made to him respecting the vessel afterward called the Alabama, then known only by her number in the building-yard, (290.) In the case of the United States, the arbitrators are told that Mr. Adams had at this

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[1] The answer of Mr. Fish to the Spanish envoy, in December, 1870, has been already referred to above, (p. 46.)

"The undersigned takes the liberty to call the attention of Mr. Lopez Roberts to the fact that a district attorney of the United States is an officer whose duties are regulated by law, and who, in the absence of executive warrant, has no right to detain the vessels of American citizens without legal process, founded not upon surmises, or upon the antecedent character of a vessel, or upon the belief or conviction of a consul, but upon proof submitted according to the forms required by law."

There are several examples of this in the correspondence of the Government of the United States with Spain and Portugal. (Appendix, vol. iii, p. 95.)

The following letters, exchanged between the Spanish consul at New York and the United States district attorney in 1817, afford a convenient instance. (Ibid., p. 119.)

Mr. Stoughton to Mr. Fisk.

"CONSULATE OF SPAIN,
"*New York, September* 16, 1817.

"SIR: Some days ago there arrived in the port of New York an armed brig, proceeding from Norfolk, which I have been very credibly informed is a vessel pretending to have a commission from Venezuela, but whose object in coming into this port was to procure an additional supply of men wherewith to commit hostilities against the subjects and possessions of the King of Spain. A few days ago I presented to the collector of the port of New York an affidavit of a man named John Reilley, stating that he had been requested to enlist on board of a vessel, which was represented to him to be the privateer schooner Lively, bound to Amelia Island to join General McGregor, to invade the territories of his Catholic Majesty.

"I am now informed that the brig above mentioned is the vessel alluded to, Reilley having either been mistaken in the name or designedly deceived by the agents of the privateer. I now inclose the affidavit of John Finegan, by which you will perceive that the officers of the above brig (whose name is the American Libre, commanded by Captain Barnard) are enlisting, and have enlisted, men in this port to proceed against the Spanish possessions. I have caused application to be made to the collector, who doubts the extent of his authority in interfering with this vessel. Now, as there must be provisions in the laws and treaties of the United States vesting an authority in some of its officers to prevent the equipment of vessels and the enlistment of men in the United States, to proceed against a foreign nation at peace with the United States, I make this application to you, most urgently requesting you to take whatever measures may be necessary immediately, in order to prevent the departure of the above vessel, at least until she shall give bonds that she will not commit hostilities against Spanish subjects. The vessel, it is said, will sail to-morrow morning.

"Indeed, if an inquiry were instituted, I am induced to believe the above brig will be found to be a pirate.

"I have, &c.,
(Signed) "THOMAS STOUGHTON."

Affidavit of John Finegan.

"SEPTEMBER 16, 1817.

"STATE OF NEW YORK, *ss:*

"John Finegan, at present in the city of New York, being duly sworn, saith that he was requested by a man, who is represented to be the commissary of the vessel next mentioned, to go out in the Patriot, brig, now lying at the quarantine ground; that the destination of the said vessel is to fight against the Spaniards; that the deponent was told that on his arrival in Spanish possessions he was to join the land service of the time good reason "to think that it would be necessary to obtain strictly technical proof of a violation of the municipal law of England before he could hope to obtain the detention" of the ship, and that "he thought he had such proof." Mr. Adams did not, however, in his letter furnish or offer any proof at all, and the inclosed letter from Mr. Dudley contained nothing showing or tending to show the purpose for which [83] the *vessel was intended, beyond some hearsay statements, reported to come from persons who could not be compelled to give evidence, and an expression of his own opinion that "there was not the least room for doubt about it."

On the 25th June Her Majesty's government ordered inquiry to be made on the spot. At the same time the two letters were laid before the law-officers of the Crown. The latter reported—

> That if the representation made to Her Majesty's government by Mr. Adams is in accordance with the facts, the building and equipment of the steamer in question is a

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patriots; that deponent knows of five persons who have been engaged in like manner, who are about to proceed on board the said brig; that deponent was told that as soon as he gets on board he will receive his advance; that officers are at present employed in the city of New York in looking out for men, and endeavoring to enlist them to proceed in the said vessel.

(Signed) "JOHN his + mark FINEGAN.

"Sworn this 16th day of September, 1817, before me.

"SAMUEL B. ROMAINE."

Mr. Stoughton to Mr. Fisk.

"CONSULATE OF SPAIN,
"*New York, September* 17, 1817.

"SIR: I inclose the deposition of John Reilley, relating to the privateer brig, about which I yesterday had the honor to address you. You will perceive by the affidavit that officers belonging to that brig are openly employed in this city in recruiting and enlisting men to join with General McGregor, and invade the possessions of the King of Spain.

"I need not remind you that, by the existing laws of the United States, these enlistments are unlawful, and that not only the vessel on board of which they are to embark is liable to seizure and forfeiture, but that the captain and the officers thereof, who are engaged in this business, are liable to a heavy fine and imprisonment. As these are flagrant violations of the laws of the United States, and calculated to produce serious injury to the possessions of His Majesty, and to the property of his subjects, I flatter myself that you will take, without delay, such steps as may be necessary to put a stop to these proceedings.

"I have, &c.,
(Signed) "THOMAS STOUGHTON."

Deposition of John Reilley.

"SEPTEMBER 9, 1817.

'STATE OF NEW YORK, *ss*, CITY OF NEW YORK, *ss*:

"John Reilley, at present in the city of New York, mariner, being duly sworn, saith, that some days ago deponent was requested to embark on board of a vessel which was said to be lying at the Narrows, in the Bay of New York, for the purpose of going to join General McGregor, and to fight against the Spaniards; that after he arrived at Amelia Island he might either join the land service or the naval service; that deponent would be paid as soon as he got on board; that several persons were engaged in looking out for recruits to proceed upon the same service, and many men were spoken to for the purpose. Deponent was then informed that the vessel was the privateer schooner Lively, but has since learned that it was a mistake, and that the vessel in question is the patriot brig Americano Libre, Captain Barnard, which is lying at the quarantine ground, and is armed with several large guns and many men; that several persons who are officers, captains, lieutenants, and so forth, are at present employed in recruiting men to join that service, and proceed in the said brig to Amelia; that many hands have already been bespoken, and are now waiting for money which has been promised to them; that the offers made to them are to give them $8 a month and clothing, together with $10 or $12 in advance. Deponent supposes that the officers above mentioned were in treaty with about twenty persons, who were to go on board as soon as their advance was paid to them, and which the said officers told them would be manifest violation of the foreign-enlistment act, and steps ought to be taken to put that act in force and to prevent the vessel from going to sea.

The report of the United States consul at Liverpool, inclosed by Mr. Adams, besides suggesting other grounds of reasonable suspicion, contains a direct assertion that the foreman of Messrs. Laird, the builders, has stated that this vessel is intended as a privateer for the service of the government of the Southern States; and, if the character of the vessel and of her equipment be such as the same report describes them to be, it seems evident that she must be intended for some warlike purpose.

Under these circumstances, we think that proper steps ought to be taken, under the direction of Her Majesty's government, by the authorities of the customs at [84] Liverpool, to ascertain the truth, and *that, if sufficient evidence can be obtained to justify proceedings under the foreign-enlistment act, such proceedings should be taken as early as possible. In the mean time Mr. Adams ought, we think, to be informed that Her Majesty's government are proceeding to investigate the case; but that the course which they may eventually take must necessarily depend upon the nature and sufficiency of any evidence of a breach of the law which they may be enabled to obtain; and that it will be desirable that any evidence in the possession of the United States consul at Liverpool should be at once communicated to the officers of Her Majesty's customs at that port.[1]

On the 4th July the results of the inquiry instituted at Liverpool by the customs department were communicated to Mr. Adams, with a sug-

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during the course of the day; among the officers there is one who is called a general. That the above men were told, in deponent's presence, by the officers who were enlisting them, that they were principally wanted to join the land service against the royalists. And further the deponent saith not.

(Signed) "JOHN REILLEY.

"Sworn this 10th day of September, before me.

"FRANCIS R. TILLON,
"*Notary Public*."

Mr. Fisk to Mr. Stoughton.

"NEW YORK, *September* 17, 1817.

"SIR: I have duly received your notes of yesterday evening and of this day, and have referred to the statutes providing for the punishment of the offenses stated. It is not a case, from the evidence mentioned, that would justify the collector in detaining the vessel; the aggression is to be punished in the ordinary mode of prosecuting those who are guilty of misdemeanors. Oath is to be made of the facts by the complainant, who enters into a recognizance to appear and prosecute the offenders before any process can issue. This oath being made, and recognizance taken, the judge of the circuit court will issue a warrant to apprehend the accused, and bring them before him, to be further dealt with according to law. When apprehended, it is the province of the attorney of the United States to conduct the prosecution to judgment. I have no authority to administer an oath, or to issue a warrant, nor have I the power to issue any process to arrest and detain the vessel in question, unless by the direction of an executive officer of the United States. By the reference you have furnished, the parties complained of are to be prosecuted either under the 4th section of the act of Congress passed on the 3d of March, 1817, or under the 2d section of the act passed 5th June, 1794. By adverting to these statutes, it will be seen that the vessel is not liable to seizure for the act of any person enlisting himself to go on board, or for hiring or retaining another person to enlist; the punishment is personal to the offenders; and those who disclose the fact, on oath, within thirty days after enlisting, are protected from prosecution. The offenders are to be arrested and prosecuted in the manner I have stated. I beg you to be assured, sir, that it is not from a disposition either to shrink from the performance of my duty, or to decline interfering to defeat any illegal enterprise against the subjects or possessions of a power with whom the United States are at peace, that I have stated to you the embarrassments I must encounter in attempting a compliance with your request upon any information with which I am furnished. If it is in your power to procure the names of the parties, and the evidence upon which a prosecution for a misdemeanor can be founded, I will readily co-operate with the proper authorities in having every offender arrested and brought to justice. It is impracticable for me, or any other officer of the United States, to take any legal measures against aggressors, upon the indefinite statement of certain persons being concerned in an illegal transaction. Since the receipt of your notes, I have had an interview with the collector, and we are unable to discover any other legal course of proceeding in this case than that adopted in the ordinary cases of misdemeanors.

"I have, &c.,

(Signed) "JONATHAN FISK."

The Spanish consul rejoined by a warm remonstrance. The expedition appears to have been permitted to sail unmolested.

[1] British Case, p. 83; Appendix, vol. 1, p. 181.

gestion that he should instruct "the United States consul at Liverpool to submit to the collector of customs at that port such evidence as he may possess tending to show that his suspicions as to the destination of the vessel in question are well founded."[1]

If Mr. Adams, or the consul from whom he derived his information, was at this time possessed of evidence as to the intended employment and real character of the ship, the time had now arrived when it ought to have been produced without delay.

Five days afterward, on the 9th July, the consul wrote a letter, received on the 10th, which purported to convey "all the information and circumstances which had come to his knowledge" to the collector of customs.[2] The contents of this letter, when examined, will be found to consist partly of one or two alleged facts, (not proved,) tending to connect Bullock with the vessel; partly of statements or admissions said to have been made by various persons to third parties, and to have been by them reported to the consul. The persons to whom these statements or admissions were ascribed were two officers of the Sumter, who had passed through Liverpool two months before; a foreman then or previously employed in the ship-builders' yard, and not designated by name; and "a youth named Robinson," who was understood to be at "a school in London." Mr. Dudley had not himself seen any of these persons; he had only heard from others (whose names he said he could not disclose) that they had made the statements or admissions attributed to them. His information, therefore, consisted in reality of reports, received from anonymous persons, of statements alleged to have been made by others who could not be found, or who, if found, could not have been compelled to give evidence, since the evidence would have tended to criminate themselves. Of Bullock nothing was at this time known to Her Majesty's government, and the consul, although he asserted that Bullock was a confederate officer sent over to England for a particular purpose, furnished no evidence of this, nor offered to furnish any.

Mr. Dudley was therefore informed by the collector that the officers of the revenue would not be justified in acting on the statements contained in his letter, unless they could be substantiated by evidence.

On the 21st July, eleven days after the collector's reply, and a month after the time when (as is alleged) Mr. Adams thought he had in his possession "strictly technical proof" of a violation of the law, some evidence was produced for the first time, and laid before the collector by the consul. This evidence consisted of six depositions, of which only one, purporting to be sworn by a man named Passmore, was material to the question, and legally admissible.[3] It has already been observed that, to rely on evidence of this kind, proceeding from a single witness, without corroboration, and without inquiry into his character and general credibility, would, according to judicial experience in England, (and, it may be added, in the United States likewise, and probably in other countries,) have been very unsafe in a case of this nature.[4]

The consul was, however, informed that it was competent for him, if he should think fit, to institute at his own risk a prosecution against the persons supposed to be concerned in the alleged violation of the law.[5]

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[1] British Case, page 84; Appendix, vol. i, p. 184.

[2] Appendix to Case of the United States, vol. iii, p. 17; vol. vi, p. 383.

[3] Ibid., vol. iii, p. 21; vol. vi, p. 391.

[4] British Case, p. 91.

[5] Appendix to Case of the United States, vol. iii, p. 21; vol. vi, p. 396. Reference has already been made above (p. 82) to the answers given in a like sense by Mr. Fish, to the Spanish minister in December, 1870, and by Mr. Fisk to the Spanish consul in 1817.

[85] *In the Case of the United States the arbitrators are told that the depositions submitted on the 21st were "conclusively passed upon" by Her Majesty's government.[1] This is a misapprehension, if it is meant that they were accepted by the government as conclusive. What the government accepted as sufficient was not the incomplete and scanty evidence of the 21st, but the same evidence, strengthened and completed by the additional depositions of the 23d and 25th.

On the 23d July two further depositions were furnished by the board of customs.[2] An additional deposition was received on the 25th July.[3] On Tuesday, the 29th July, the law officers reported their opinion that the evidence was sufficient, and that the vessel ought to be seized.[4] This opinion was unfortunately given too late, the vessel having put to sea on the same morning, under the circumstances stated in the British Case.[5]

We see, then, that although, according to the statements made in the Case of the United States, this vessel had been an object of suspicion and scrutiny to the consul ever since November, 1861, although he had for months believed that she was intended for the confederate government; although she had been, as is alleged, the subject of constant correspondence with his official superior and with Mr. Adams; although she had, within his knowledge, been gradually advancing to completion, had made her trial-trip, and was beginning to get ready for sea; and although Mr. Adams knew that evidence such as could be produced in a court of law, not only of her adaptation for war, but of her being intended to be employed in hostilities against the United States, was required to justify a seizure; notwithstanding all this, no evidence whatever proving or tending to prove such an intention was produced to the British government or its subordinate officials till the 21st of July, eight days before the vessel sailed, and at a time when it was reported that she might leave at any hour; and what was then furnished required to be strengthened by additional evidence, part of which was delivered on the sixth and the remainder on the fourth day before her departure. It is clear beyond controversy that this long and hazardous delay on the part of the officials of the United States in this country must have been due to one of two causes—either to a want of due diligence in procuring the evidence necessary to verify the suspicions which they entertained, or to their inability to procure it. The second of these explanations, which is confirmed by Mr. Dudley's complaints of the difficulty experienced in inducing any witness to come forward, is probably the correct one. But, in either case, what becomes of the charge of gross and culpable negligence against the British government? If Mr. Dudley, whose business it was to find out the truth of a suspected enterprise so dangerous to his country, could get no evidence of it until too late, why is it imputed as gross negligence to the officers of the government that they, without his means of information, were not more successful? If he could, why is the penalty of his negligence to be paid by the British nation?

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[1] Page 371.

[2] Appendix to British Case, vol. i, p. 194.

[3] Ibid., p. 198.

[4] Ibid., p. 200.

[5] Some stress is laid, in the Case of the United States, (pp. 368, 374,) on a statement in a report by the commissioner of customs to the treasury, that the revenue officers at Liverpool should "watch" the ship. This is construed into a promise to Mr. Adams himself that she should be watched to prevent her departure; and he is said to have relied upon it, and to have been indignant when the authorities "failed to redeem their voluntary promise." Mr. Adams, however, knew well that, although the ship might be "watched" by the officers to ascertain whether she took arms on board, (the context shows that this was meant,) nothing but an actual seizure could legally prevent her from sailing.

Up to this point, then, it is clear that there is no reasonable ground for the charges brought by the United States against Great Britain. If those charges are to be supported in any way, they must find their only support in what was done, or omitted to be done, afterward. That the question whether the evidence was credible and sufficient to sustain a seizure, was one on which the British government had a right, before acting, to consult its official legal advisers, cannot be denied. It was clearly and eminently such a question. Nor does it admit of denial that the evidence was actually referred, as soon as it was received from time to time, by the government to its advisers, for their opinion; nor that, if any reasonable doubt existed, the government and its advisers were justified in taking reasonable time for consideration.

The charge of gross negligence, then, resolves itself, when tested by examination, into this and no more: that the evidence not having been delivered till within a few days of the sailing of the ship, and then in successive installments sent almost from day to day, a little more time than may now perhaps be thought to have been absolutely necessary was consumed in obtaining the advice and forming the conclusion on which the government ultimately acted.

A circumstance has been already mentioned, of which Mr. Adams was informed at the time, as having occasioned some little delay.[1]

[86] Nor ought it to be forgotten that the sole *facts which were alleged, and as to which evidence was offered, and for preventing which Her Majesty's government was solicited to interfere, were the fitting out for sea in the neutral port of a vessel specially adapted by her construction for war, and built as a commercial transaction to the order of an agent of a belligerent, and her apprehended departure, unarmed, for an unknown destination, which might be a port of the Confederate States. Of arrangements for arming her nothing was known to the officials of the United States, and nothing was brought to the knowledge of Her Majesty's government; and they are now informed by her builders, Messrs. Laird, (who would, if necessary, give evidence to that effect before the arbitrators,) that they also were entirely ignorant of those arrangements, and that they believed the vessel to be intended to run the blockade. In the opinion of the government and its advisers, the adaptation of this vessel for war, with a view to her employment in the service of the Confederate States, would, if proved, have been a breach of the foreign-enlistment act; but this was not established by authority; it was a point on which high legal opinions were known to differ; and it was the more necessary that the evidence should be clear.

When the matter is reduced to this point, we see that it is one upon which an adverse judgment cannot reasonably be founded by a court of international arbitration. Whether the evidence furnished was sufficient; at what time it became sufficient, (taking into account the principles of English law, by which the government and its advisers were bound;) and whether the conclusion at which the government arrived was or was not deferred a little too long by a reasonable doubt or an accidental delay, are questions as to which such a court might, perhaps, find it not easy to form a clear and decisive opinion. The British government conceives, however, that it is not upon grounds such as these that a grave charge of neglect of international duty ought, when raised, to be decided. The standard of international obligation which a decision adverse to Great Britain on such grounds would assume, has never heretofore been applied to or acknowledged by any government; and it needs no argument to show that the establishment of it would be a matter of serious consequence, not to maritime States alone, but to the general peace and tranquillity of nations.

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[1] The illness of the Queen's advocate; British Case, p. 118.

The same observations apply with still greater force to the complaints made by the United States of some petty mistake which possibly may have been made, or some small defect of promptitude in decision or action which may possibly have been exhibited by subordinate officers at Liverpool after the departure of the vessel. At no time after she sailed was there more than a bare possibility that by the utmost promptitude, aided by good fortune, she might have been seized while in British waters. It appears incredible that the United States should mean seriously to contend that, because a subordinate revenue officer hesitates when in doubt to assume a responsibility, or writes to his superior by post instead of communicating by telegraph, a grave international injury has been perpetrated and liabilities incurred such as they now seek to establish. It is evident that, on such complaints, were they fit to be entertained, no just conclusion could be formed without a minute knowledge of the attendant circumstances, such as is now impossible to the arbitrators, and unattainable even by Her Majesty's government. How little support is to be found in the history of the United States themselves for the application of so rigorous a standard has been sufficiently shown in an earlier portion of this Counter Case. Indeed, we need not go beyond the facts immediately before us. Is the Government of the United States willing to be charged with gross negligence on the ground that the captain of the Tuscarora was lying idle at Southampton or sailing in St. George's Channel when he ought to have been off the Mersey?

Her Majesty's government forbear, therefore, to detain the arbitrators by an examination of the minor inaccuracies which occur in this part of the Case, and will refer to only one or two of them. It is said that the collector knew on the 30th of an "admitted recruitment" of men, and that the commissioners of customs knew of it on the following day and "took no notice" of it.[1] There was, however, no admitted recruitment, in the sense of an unlawful enlistment of men, in the port of Liverpool. There was nothing to show that the men were not hired for the mere purpose of navigating an unarmed vessel; and it has since proved that they really were so. No enlistment took place until after the vessel reached the Azores, when some agreed to take service and some refused.[2] If, therefore, they had been taken before a magistrate at Liverpool, they must have been released. It is said that the revenue officers at Liverpool permitted the ship to remain unmolested in British waters during nearly two days, when they were or should [87] have been cognizant of *it. Whither she had gone was, in fact, quite unknown until the master of a tug-boat reported that she had been cruising off Point Lynas, about fifty miles from Liverpool. It is said that at the time when this report was received, the collector had received orders to stop the vessel. If this was so, he had not the means of immediately seizing a ship fifty miles away, off the coast of Wales. It is said that her departure from the Mersey was "hastened by the illicit receipt of intelligence of the decision of the government to stop her." It is difficult to understand how this could have been the case, since the decision of the government to stop her was not formed till after the report of the law-officers, which was only received on the 29th; and if it had been so, the British government could never be held responsible for the treachery of some unknown subordinate, who may have become informed of their decision, or may have anticipated that it would be made.

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[1] Case of the United States, p. 377.

[2] See the affidavit of Redden, Appendix to Case of the United States, vol. vi, p. 422.

Her Majesty's government maintains that claims in respect of the Alabama must be supported, if at all, solely and entirely by a clearly ascertained failure of duty, for which the government itself can justly be held responsible, and that the failure of duty must be such as can with propriety be made the subject of a serious international complaint.

To found a complaint or claim, wholly or in part, on the asserted fact that a government would not act against persons or property within its dominions without "strict technical evidence," either means nothing or means that the rules which civilized states have found necessary in the domestic administration of justice, for the protection of private rights and of persons wrongfully accused, are to be set aside in cases of international controversy. International law would then become a pretext not only for interfering with the internal arrangements of different countries in matter of legal procedure, but for drawing back society to the use of those less safe means for the enforcement of rights which, in the course of its progress, it has found reason to exchange for other and more equitable means.

To found a charge of neglect on the lapse of so short an interval as occurred in the case of the Alabama between the production of evidence and the decision that it was sufficient to act upon, is to lay down an impracticable standard of human conduct. It is a demand that the conduct of a government with its various departments, with modes of action which are of necessity methodical, and more or less complex, shall proceed with a mechanical precision which is not applicable to the practical business of life. Where nice considerations of right, as between parties having opposite interests, have to be weighed, the application of such a principle is palpably unreasonable; yet on what other principle can it be maintained that the time taken between Friday, the 25th, and Tuesday, the 29th July, for the joint action of the foreign office and the law-officers was so plainly excessive that it may justly be made a ground for formal condemnation? Does it not rather carry with it presumptive evidence of good faith?

As to the subsequent arming of this vessel in the waters of the Azores, Her Majesty's goverment is content to refer the arbitrators to the statements contained in the British Case. They are told, indeed, in the Case of the United States, that she was "armed within British jurisdiction," which is explained as meaning that the armament intended for her was sent from the same port as the ship herself. It is added that "the British authorities had such ample notice that they must be assumed to have known all the facts." If by this it be meant that the government or its officers had any notice of the dispatch of the Alabama's armament, the fact is otherwise; if the meaning be that, because they knew of the building of the ship, they must be assumed to have known the arrangements for arming her, (of which they, as well as the minister and consul of the United States, were, in fact, totally ignorant,) this, to say the least, would be a presumption of a very strange and unusual kind.

As to this point, it is enough to repeat here what was said in the Case of Great Britain. The Alabama sailed from England wholly unarmed, and with a crew hired to work the ship, and not enlisted for the confederate service. She received her armament at a distance of more than 1,000 miles from England, and was armed for war, not within the Queen's dominions, but either in Portuguese waters or on the high seas. The guns and ammunition, which were put on board of her off Terceira, had been procured and exported from England in an ordinary merchant-steamer, which loaded them as cargo, and sailed with a regular clearance for Nassau. The clearance and departure of this steamer presented, so far as Her Majesty's government is aware, no circumstance distinguishing her from ordinary blockade-runners. No information was ever given or representation made to the government as to this ship or her cargo before she left British waters; nor does it appear that the errand on which she was employed was known to or suspected by the officials of the United States. But, even had a suspicion existed that her cargo was exported with the intention that it should be used, either in the Confederate States or elsewhere, in arming a vessel which had been unlawfully fitted in England for warlike employment, [88] this would not *have made it the duty of the officers of customs to detain her or have empowered them to do so. Such a transaction is not a breach of English law, nor is it one which the British government was under any obligation to prevent. Whether the cargo was sent from the same port as the ship or from a different port, and by the same or different persons, is manifestly immaterial for this purpose. The distinction is plainly not such as to create in the one case a duty which would not arise in the other.

The Alabama was commissioned by the government of the Confederate States and officered by American citizens. Of the crew a considerable number were British subjects, who were induced by persuasion and promises of reward to take service in her when she was off Terceira. Others were American citizens, and the proportion which these bore to the rest increased during her cruise.

Her Majesty's government refrains, in the case of this vessel, as in that of the Florida, from pursuing in this place the complaints made respecting the subsequent admission of her into some of the colonial ports of Great Britain. It is said, indeed, in the Case of the United States, that Earl Russell promised Mr. Adams to send orders to Jamaica (which she visited in January, 1862) to detain her for a violation of British sovereignty, and that this promise was not kept; and that "Great Britain did not, as Earl Russell had promised, send out orders for her detention," is one of the grounds on which the United States ask an award against this country. Earl Russell gave no such promise. In a conversation with Mr. Adams, immediately after she left Liverpool, and at a time when her immediate destination was unknown, he is stated to have told the latter that he "should send directions to have her stopped, if she went, as was probable, to Nassau." Orders to this effect were, in fact, sent. But the contingency contemplated as probable did not occur; the ship, as has been seen, did not go to Nassau, but to Terceira; and when she first appeared in British waters she was a commissioned ship of war, and had been received as such in a French port, as she afterward was (notwithstanding the remonstrances of the United States) in ports of Brazil. It was not the duty of the British government or of any other neutral power to cause her to be seized and detained when she entered its ports in that character. She was received there under precisely the same conditions as vessels of war of the United States, and the imputation of partiality which is cast, in the Case of the United States, on the governor of the Cape Colony, is entirely devoid of foundation. Nor is it necessary to enter into the complaints laid before Her Majesty's government by Mr. Adams respecting acts done by the commander of the Alabama on the high seas. Mr. Adams does not seem to have remembered that a sentence of condemnation is not necessary where there is no neutral interest in ship or cargo; nor that the practice of using false colors to approach an enemy is regarded in all navies as allowable, provided the true flag be hoisted before a shot is fired. Her Majesty's government is not, however, concerned to defend the conduct of the captain of the Alabama, when out of its jurisdiction, in these or any other particulars. Whatever it may have been, Great Britain is not responsible for it; and if it furnished any reason against the admission of his ship into British ports, it would have been equally valid against her reception in the ports of France and Brazil.

It will have been observed from the foregoing statement, as well as from the fuller narrative which Her Majesty's government has previously presented to the arbitrators, that the cases of the Florida and Alabama differ from one another in various more or less important particulars. But Her Majesty's government again submit that neither in respect of the Alabama nor in respect of the Florida is Great Britain chargeable with any failure of international duty for which reparation is due from her to the United States.

[89] *PART VII.

THE GEORGIA AND SHENANDOAH.

Part VII.—The Georgia and Shenandoah.

Passing to the cases of the Georgia and Shenandoah, the tribunal has next to deal with two vessels, as to both of which it is not only clear that the British government had not, before they respectively departed from its jurisdiction, any reasonable ground to believe that they were intended to cruise or carry on war against the United States, but it is also clear that they were not within its jurisdiction armed, fitted out, or equipped or specially adapted, either wholly or in part, to warlike use.

THE GEORGIA.

The Georgia.

The Georgia, as the arbitrators are aware, was a vessel built at Dumbarton, in Scotland, and sent to sea from the port of Greenock in April, 1863. She had undergone, when completed, the customary surveys by the proper officer of the port of Glasgow, and is described by him as appearing to be intended for commercial purposes. Her frame-work and platings were of the ordinary sizes for vessels of her class. The tide-surveyor at Greenock, in like manner, "saw nothing on board which could lead him to suspect that she was intended for war purposes." The collector at Greenock adds, from his own observation, that she "was not heavily sparred; indeed, she could not spread more canvas than an ordinary merchant-ship."[1] In short, she was built, fitted up, and rigged as a ship of commerce, and not as a ship of war. Indeed, when the endeavor was afterward made to employ her as a cruiser, she was found upon trial to be not adapted for this purpose, and she was for that reason dismantled and sold before the end of the war, after having been at sea altogether about nine months. She was registered under the name of the Japan, in the name of a Liverpool merchant, and was entered outward, and cleared in the customary way, for a port of destination in the East Indies. She was advertised at the Sailors' Home in Liverpool as about to sail for Singapore; and her crew were hired for a voyage to Singapore or some intermediate port, and for a period of two years. The men, when they were hired, believed this to be the true destination of the ship, and her voyage to be a commercial one; and they appear to have continued under this belief until after the vessel had arrived off the coast of France. The number of her crew appears, from depositions furnished on the part of the United States, to have been about fifty. In the Case of the United States a description of the ship is given, without referring to the evidence on which it is founded. She is described, in one of the depositions obtained and produced by Mr. Adams, as "an iron vessel, very slightly built."[2] There is no reason whatever to believe that when she sailed from Greenock she had a magazine, or that her cabins or interior fittings were of any unusual strength. She had on board joiners who were fitting up her cabins when she left her anchorage. She was, therefore, when she left this country, a ship to which the first three rules mentioned in the sixth article of the treaty would not apply; nor was she a ship with which Her Majesty's government were under any obligation to interfere, according to any known rule or principle of international law.[1]

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[1] Appendix to British Case, vol. i, p. 404.

[2] Appendix to Case of the United States, vol. vi, p. 512.

The assertion is repeated in this case that the service for which the vessel was constructed was "notorious."[2] In proof of this the arbitrators are furnished with two anonymous letters published in an English newspaper in February, 1863, one of which contained no reference whatever to this or any vessel building or supposed to be building for the Confederate States, while the other declared that upwards of fifty were being built for the government of those States, and mentioned a "fine screw-steamer," lying in the Clyde and called the Virginia, as reported [90] to be partly owned by the confederates and *partly by individuals at Nassau; adding, "It is publicly announced that she is soon to be employed on the line between Nassau and Charleston." An anonymous letter, mentioning a report that a particular vessel was destined for a blockade-runner, and was partly owned by the confederate government and partly by private individuals at Nassau, is thus adduced as proof that it was notorious that the same vessel was intended for a confederate cruiser. "Her destination," it is added, "rendered it certain" that she was to carry on war against the United States. Her destination, as we have seen, was Singapore.

In this case again, as in others, the inquiry arises why no information of an enterprise described as having been so "notorious," and of such serious consequences to the United States, was furnished to Her Majesty's government or to the local authorities by the United States consul on the spot, or by Mr. Adams. The latter, it subsequently appeared, had "long been in possession of information about the construction and outfit" of the ship; but "nothing had ever been furnished to him of a nature to take proceedings upon." At all events he remained perfectly silent till nearly a week after the vessel had sailed; and the arbitrators are now asked to decide that because the British government did not take, with respect to a vessel about which it was in entire ignorance, proceedings which Mr. Adams himself knew of no facts to support, Great Britain is guilty of a failure of international duty, and responsible for the consequences of it to the United States.

It is next made a matter of complaint that, when informed that the Georgia had sailed, the government did not send a ship of war in pursuit of her. "The sailing and destination of the Japan," it is said, "were so notorious as to be the subject of newspaper comment. No time, therefore, was required for that investigation. It could have been very little trouble to acertain the facts as to the Alar," (the merchant-vessel which carried out for her arms, officers, and men.) "The answer to a telegram could have been obtained in a few minutes. Men-of-war might have been dispatched on the 8th from Portsmouth and Plymouth to seize these violaters of British sovereignty." "This was not done." The sole evidence produced in proof that the sailing and destination of the Japan were notorious on the 8th of April is an extract from a Liverpool paper published on the 9th, which mentioned a report that the vessel was intended for the confederate service, and had sailed "for unknown destinations."

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[1] British Case, p. 122.

[2] Case of the United States, pp. 392, 408; Appendix to ditto, vol. vi, p. 503.

If recourse had been had to the navy, "it is probable," the arbitrators are told, "that the complaints of the United States might not have been necessary."[1] They might have not been necessary if Mr. Adams had communicated in good time such information as he possessed, instead of keeping it undisclosed until six days after the sailing of the Georgia, and more than three days after the departure of the Alar, and if that information had tended to prove an actual or contemplated violation of the law. As it was, the intelligence of the departure of the Georgia, and the assertion (a bare assertion unsupported by any proof at all) that she was intended for the confederate service, were first communicated to the government on the 8th, coupled with the statement that "her immediate destination is Alderney, where she may be at this moment."[2] That the Alar had sailed from Newhaven for Alderney and Saint Malo was at this time known to the board of customs, though not known at the foreign office. "No investigation," the case proceeds, "was necessary." Mr. Adams's information ought to have been at once assumed to be right—though it was very frequently wrong, and indeed was materially erroneous in the present instance. The cargo and destination of the Alar might have been ascertained "by telegraph in a few minutes." Months had been insufficient, apparently, to enable Mr. Adams to acquaint himself with facts "of a nature to base proceedings on;" Her Majesty's government is to be allowed only "a few minutes." The Alar, assumed to be putting to sea on a secret and illicit errand, would naturally, it appears to be supposed, leave the particulars of her cargo and true destination in the possession of the revenue officers at Newhaven. A vessel of war dispatched from Portsmouth or Plymouth on the 8th to *Alderney* (the place designated by Mr. Adams) would, it is further assumed, have been able to find the Georgia at *Ushant*, which is not less than 150 miles off and in a very different direction, and to find her before she left that coast on the 9th or 10th. Her Majesty's government must be permitted to observe that a celerity and activity of movement are by this hypothesis attributed to Her Majesty's ships which would be nothing less than extraordinary. But it seems, besides, to be forgotten that Ushant and its territorial waters are not within the dominions of Her Majesty. They are close to the coast of France, and within the dominions of that power; and, even if it had been the duty of the British Government to institute a pursuit on the high seas of vessels not shown to have committed any offense either against British law or against the law of nations, a seizure of them in French waters would have been as plain a violation of the sovereignty of [91] France, as that of the Chesapeake in December, 1863, *within the waters of Nova Scotia, by a United States cruiser, was a violation of the sovereignty of Great Britain. That an error had been committed in the latter case was acknowleged by the United States; the British government would certainly decline in a like case to commit a similar error.

But the arbitrators are already aware that the British authorities did the very thing which they were accused of not having done. Earl Russell did not order inquiries only; he did order action. A ship of war was in fact sent to Alderney, not indeed from Portsmouth or Plymouth, but from Guernsey, to prevent any attempt which might be made to violate the foreign-enlistment act within British waters, only, however, to find that Mr. Adam's information as to the immediate destination of the suspected vessel had been wrong.

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[1] Case of the United States, p. 393.
[2] Appendix to ditto, vol. vi, p. 509.

Having delayed till too late giving any information to the British government about this ship, and having then given information which was erroneous, the United States would fain have the arbitrators assume that it was the duty of this government to employ its naval forces in searching for and pursuing her on the high seas, and even in foreign waters. There is no pretense for the suggestion of such a duty. No such duty has been acknowledged by the United States themselves, nor by any other power. Yet it is impossible to deny that the British government did act in this matter with promptitude and alacrity, scanty though the information was, and quite unsupported by proof, and too late, though, it probably was for any effectual measures.

Unable to establish against Great Britain any failure of duty in this respect, the United States attempt to found a claim on the facts that no punishment which appears adequate to the Government of the United States was inflicted on the persons concerned in fitting out the Georgia, and that she continued for some months to be registered as a British-owned ship. It is true that these arguments are evidently advanced with little confidence, but that they should be suggested at all is to Her Majesty's government a matter of some surprise.

Her Majesty's government is compelled to ask whether it is seriously contended by the Government of the United States that the Georgia, "though nominally cruising under the insurgent flag and under the direction of an insurgent officer," was all the time really controlled and owned by a British subject. Is it not, on the contrary, certain that even while Bold's name remained on the register as that of her nominal owner, the real ownership and control was in the confederate government? Does the Government of the United States seriously contest this? Has it any serious doubt of it? Her Majesty's government is unable to believe that it has. But even could it be shown that Bold was the actual, instead of being the nominal, owner; that the confederate flag was (as seems to be suggested) merely used to cover the acts of Bold and his agent, the confederate officer; and that the ship was therefore in truth and fact piratical, this would impose no responsibility on the British government. It cannot be maintained on the part of the United States that a government is to be held responsible for acts, whether of war or of piracy, done out of its jurisdiction and beyond its control, on the ground that the vessel by whose instrumentality they were committed was either nominally or really the property of one of its subjects. Certainly there is no power in the world by which this proposition has been more explicitly or resolutely denied.

But this is not all. If the argument be (as it is) untenable on general principles, what are we to think of it when we find that the very ship, which is asserted to have been British all along, was actually captured after she left Liverpool, and when plying as a merchant-ship, on the ground that she was a confederate ship of war, and could not, even by a regular sale in a neutral port, pass into the possession of a British owner and into the British mercantile marine? She is not British when the question is, whether she is to belong to a neutral who has bought and paid for her, or to be seized and appropriated by the United States. She becomes British again (but not, so far as appears, for the benefit of her former British owner) when it is supposed to be possible to found on her alleged British character a claim against Great Britain.

Of the complaint that she was suffered to remain in port for the purpose of being dismantled and sold, it is only necessary to say that, even could this be shown to be (what it clearly was not) an erroneous or improper indulgence on the part of the British authorities, it was not a failure of duty from which any injury arose to the United States; it could not, therefore, be made the foundation of a claim, and is not properly within the scope of the reference to the tribunal.

Her Majesty's government has never before heard it suggested that a government which forbears to institute prosecutions against all the persons who may have been concerned in fitting out or manning a particular vessel for the naval service of a belligerent, or may themselves [92] have served on board of her, becomes, on that account, *responsible for the losses which she may have been instrumental in inflicting on the other belligerent; and it fails to see how those losses can be attributed to the subsequent forbearance to prosecute. The consequences to which such a principle, if pursued, would lead, cannot be unknown, certainly, to the Government of the United States. It is true, indeed, that when a succession of criminal enterprises, openly undertaken against the peace and security of a friendly country, are suffered to remain unpunished, the encouragement which such impunity holds out to subsequent enterprises of a like kind is a proper subject of grave remonstrance, and may, if remonstrance be unheeded, justify the injured nation in resorting to measures of self-redress. But Her Majesty's government has always been cautious in the exercise of this right of remonstrance, being aware that it is often difficult to obtain a conviction for offenses of this class, and that the difficulty may be even enhanced by any attempted severity of punishment; and being sensible also that such questions must, in general, be left, in every country, to the independent action of the executive and judiciary authorities, without external interference.

In the case of the Georgia, prosecutions were in fact instituted against the only persons against whom there appeared to be any reasonable prospect of substantiating a charge and obtaining a conviction. As to the sentence pronounced, that is generally a matter over which the government has no control. The law leaves it, within certain limits, to the discretion of the judges, over whom the government has no power. It is not alleged by the United States that a penalty inflicted by a judge was, in any case, remitted by an act of the executive. There often may be, and in this case there were, good reasons, in the interest of the law, for resting satisfied with a moderate sentence, rather than raise difficult and inconvenient questions as to the construction of an act of Parliament.

Before proceeding to the case of the Shenandoah, it is right to recall the fact that, during the year 1863, the attention of Her Majesty's government was directed to many vessels building or fitting out in British ports, and suspected of being intended for the naval service of the Confederate States. An account of all these has been laid before the arbitrators in the British Case.[1] It has been seen that, of twelve suspected vessels, four were seized and effectually prevented from being applied to their contemplated purpose; while in the eight remaining cases no reasonable grounds of suspicion were found on examination to exist, which would have justified the government in interfering, and none of them were, in fact, ever armed or used for purposes of war. It has been seen that, in every instance, directions were given, without the least delay, for investigation and inquiry on the spot by the proper officers of government; that, in some cases, these inquiries were ordered and made before the receipt of any representation from Mr. Adams; and that in every case, without exception, either the information furnished proved to be erroneous, and the supposed *indicia* of an unlawful intention absent or deceptive, or this intention was defeated or abandoned by reason of the measures taken and the vigilance exercised by Her Majesty's government.

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[1] Pages 33 to 50.

Far, therefore, from favoring a presumption of remissness or negligence on the part of this government, the facts clearly establish a directly contrary presumption.

THE SHENANDOAH.

The Shenandoah.

This vessel, as has been seen from the statement already placed before the tribunal, had been designed solely for a merchant-steamer.[1] She was built at Glasgow to the order of a London firm, with the intention that she should be employed in the China trade. It is a matter of first importance in that trade to secure the earliest arrivals of tea; and the object of the firm in question was to have a vessel which, by the use of steam power, would be able to bring home the new teas faster than the quick sailing-vessels employed at that time for the purpose.[2] The Sea King, as she was then called, started on her first voyage to the China Seas toward the end of 1863; and, in order to make profit on her passage out, her owners contracted with the government to take troops to New Zealand. From thence she proceeded to China, and returned with a cargo of tea in the ordinary course of trade. Before starting she had been provided with two smooth-bore twelve-pounder guns, such as are usually carried by ships trading in the China seas, to be used as signal-guns, and for other purposes common to merchant-vessels.[3] In September, 1864, after her return to England, she was sold by her owners, Messrs. Robertson, to a Mr. Wright, a merchant of Liverpool, through the agency of regular ship-brokers in that town; and, on the 8th October following, she again left London on a voyage which, to all appearances, was precisely similar to her former one, excepting that, on this occasion, instead of taking out troops to New Zealand, her port of first destination was Bombay.

[93] *It appears, from documents now produced by the United States for the first time, that Mr. Dudley, the United States consul at Liverpool, had noticed this vessel when on a visit to Glasgow, where she was built in October, 1863, and that he had at that time written to his Government, describing her as "a very likely steamer for the confederates," to whom he heard that she was going to be sold. Mr. Dudley's information, as not infrequently happened, proved to be incorrect; and all suspicions were set at rest by the discovery that the Sea King was taking out troops to New Zealand.[4] Nor does his statement that she was "well adapted for war purposes" seem to have been more accurate. Her appearance, even after her conversion into a confederate cruiser, is stated to have been that of an ordinary merchant-vessel, and her own officers doubted whether it would have been safe to fire a broadside with the guns which were then placed on board of her.[5] It is there-

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[1] British Case, pages 143 and 160.

[2] Appendix to British Case, vol. i, p. 724.

[3] Ibid., p. 725.

[4] Appendix to Case of United States, vol. vi, p. 555.

[5] See report of Captain Payne, Appendix to British Case, vol. i, p. 557, and of the United States consul at Melbourne, Appendix to Case of the United States, vol. vi, p. 595.

fore clear that this vessel also, when she left this country, was not a ship to which the first of the three rules in the sixth article of the treaty would have applied, nor a ship with which Her Majesty's government were under any obligation to interfere, according to any rule or principle of international law.

It is not pretended that the attention of the British government was in any way called to the Sea King, even at the time when the suspicions of the United States consular authorities were thus roused in regard to her. From that time up to her second departure from England, in October, 1864, the vessel seems to have been entirely lost sight of. Ten days after that second departure Mr. Dudley discovered and reported to the United States legation in London the fact that Mr. Wright, the purchaser of the Sea King, was the father-in-law of Mr. Prioleau, a member of the firm of Fraser, Trenholm & Co.[1] It is now contended, in the Case of the United States, that this circumstance in the family history of the firm should have been known beforehand to the British government, whose duty it was to exercise a special supervision over any transfer of shipping made to or by this gentleman, and that the fact of his having acquired a vessel built for the China trade, and sent her out to Bombay with what it subsequently appeared was an ordinary cargo for such a voyage,[2] should "at once have attracted the attention of the British officials." "The omission to take notice of this fact," it is said, "is a proof of want of the due diligence required by the treaty."[3] It was a failure of due diligence—nay, even of "the most ordinary diligence"—on the part of Her Majesty's government, that it forbore to pry into the family circumstances of Prioleau, acquaint itself with the name of his father-in-law—and, it may be presumed, with his other connections—and prevent, by some unexplained process, such persons from buying steamers in the London market. What exact "notice" the officials should have taken, or what they should have done to follow up "so palpable a clew," the United States have omitted, or perhaps have not found it easy to state. It is difficult to suppose that it can be seriously argued that such a system of espionage is among the duties which can properly be expected of a neutral government, or that such a government can fairly be charged with negligence in having failed to discover grounds for action, when the parties most directly interested, with equal access to information, had not even seen cause for suspicion. But Her Majesty's government thinks it right to direct the attention of the tribunal to this illustration of the view of international duty on which the claims of the United States are founded, and of the "due diligence," the "wakefulness and watchfulness" which, according to that view, are to be exacted from all neutral nations, under the penalty of being exposed to such demands as are now made against Great Britain.

The best proof of the apparently innocent nature of the voyage is the circumstances that the persons most likely to notice anything out of the ordinary course, namely, the crew of the vessel herself, were quite unsuspicious of the real intentions of the owner; and that when it became known to them, on their arrival off Madeira, that the vessel was to be turned into a confederate cruiser, forty-two out of forty-seven of them refused every inducement in the shape of money and promises held out to them to serve in her, and insisted on being sent back to England.

On the day following the departure of the Sea King from the port of

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[1] Appendix to Case of United States, vol. iii, p. 319; vol. vi, p. 560.

[2] See evidence given at the trial of Captain Corbett, Appendix to Case of the United States, vol. iv, p. 632,

[3] Case of the United States, p. 417.

London, another steamer, the Laurel, left Liverpool ostensibly for Matamoras *via* Nassau. The United States consul at Liverpool reported to his Government that she had taken on board cases marked as machinery, but, in reality, as he believed, containing guns and gun-carriages; [94] *that she had shipped many more seamen than were necessary for a vessel of her description; that he heard that some confederate officers were also to go out in her; and that he had his suspicions that she would prove to be a privateer; but he added, "I have no evidence against her."[1] He could obtain no evidence; but this does not prevent the introduction into the Case of the United States of the assertion that the British government could, by the exercise of due diligence, have detained her—without evidence, it must be presumed, and without any charge of an offense known to the law. Neither Mr. Dudley nor the United States legation in London gave any notice on the subject to the British authorities, and the attention of the government was first called to the proceedings of the two vessels by a report received on the 12th of November from the British consul at Teneriffe.

The meeting of the Laurel and the Sea King off the Madeira Islands, and the transfer of the latter vessel to the confederate flag under the name of the Shenandoah, after receiving her armament and crew from the Laurel, have already been stated in detail by Her Majesty's government in the Case presented by it to the tribunal, and need not be here repeated. For the same reason, no further account need be given of the investigations which were made by the British consul at Teneriffe on the arrival of Captain Corbett and the late crew of the Sea King at that island, on board the Laurel, and which led to his sending the captain to England under arrest for breach of the foreign-enlistment act; nor of the steps which were thereupon at once taken by the government to bring the offender to justice. Her Majesty's government maintains that all that was in its power and could fairly be expected of it was done to vindicate the neutrality of Great Britain on this occasion.

The Shenandoah proceeded from Madeira, and, after a cruise of about three months, anchored in Hobson's Bay, the port of Melbourne, on the evening of the 25th of January, 1865. She was the first vessel of war belonging to either of the contending parties which had appeared in Australian waters since the commencement of the civil war.[2] The circumstances of her visit and the conduct of her commander, Lieutenant Waddell, during her stay, placed the colonial authorities in a position of no little difficulty and perplexity, in which they seem to have acted with great discretion and vigor, though their conduct has not escaped much invidious comment in the Case of the United States. It may be convenient to the arbitrators that the facts should be here restated in the form of a connected narrative.

Lieutenant Waddell, immediately on his arrival, sent a letter to the governor stating that the machinery of the Shenandoah required repairs, and that he was in want of coal, and requesting permission for repairs and supplies to enable him to get to sea as quickly as possible.[2] This note was received about half past 8 o'clock in the evening of the 25th of January; and the messenger was informed that it should receive early attention, and be replied to in the course of the following day. The governor accordingly summoned the executive council on the 26th, and communicated to them the application he had received; and, upon their advice, a letter was addressed to Lieutenant Waddell, granting the permission desired, and requesting information as to the nature and extent of the repairs and supplies required, in order that the governor might be enabled to judge of the time necessary for the Shenandoah to remain in the port of Melbourne. Extracts of orders issued by Her Majesty's government for the proper preservation of neutrality were at the same time forwarded for Lieutenant Waddell's guidance.[1]

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[1] Appendix to Case of the United States, vol. iii, p. 317; vol. vi, p. 538.
[2] Appendix to British Case, vol. i, p. 500.

Upon receiving this communication, Lieutenant Waddell applied to Messrs. Langlands, iron-founders, of Melbourne, to examine the vessel and undertake the repairs. He seems further, from a report received by the governor from the officials of the port, to have at once set men to calk the decks and outside of the vessel, which was the only repair that could be executed in her position at the time.[2] On the 28th January he wrote to apologize for the delay in furnishing the particulars requested of him, and explained that Messrs. Langlands had been pursuing the examination, and had not yet finished their report, although he had impressed upon them the importance of haste. On the 30th January a report of the repairs required was furnished by Messrs. Langlands, and forwarded by Lieutenant Waddell to the colonial government. It was to the effect that it would be necessary to place [95] the vessel on the slip.[3] On the same day, and before *granting permission for this purpose, the governor appointed a board of three officers, one of whom was the government engineer, to proceed on board the Shenandoah, and report whether she was then in a fit state to go to sea, or what repairs were necessary. This board had the vessel examined by a diver, and reported on the 1st of February that she was not in a fit state to proceed to sea as a steamship; that repairs were necessary, and that the extent of the damage could not be ascertained without the vessel being slipped.[4] Permission was thereupon granted for placing the vessel upon the slip, which had originally been built by the government, but was at that time in the hands of a private firm.

In reply to a renewed inquiry, Lieutenant Waddell stated the nature of the supplies required by him, which consisted of fresh provisions daily for the crew, and stores of wine, spirits, lime-juice, and clothing.[5] Of these he received permission to ship such quantities as might reasonably be necessary. An application which he made to be allowed to land some surplus stores was refused, on the advice of the attorney-general, as being inconsistent with the proper observance of neutrality;[6] and he was afterward informed that, for the same reason, the use of appliances which were the property of the government could not be granted, nor any assistance rendered by it, directly or indirectly, toward effecting the repairs of the Shenandoah.[7] The governor had also given directions that the officials of the port should furnish him with daily reports of the progress made in repairing and provisioning the vessel, and that every precaution should be taken against her armament being increased or rendered more effective.[8]

The reports received not showing sufficient progress in the repairs, a letter was addressed to Lieutenant Waddell on the 7th February, desiring him to name a day for proceeding to sea. Lieutenant Waddell explained the delay which had taken place as arising from the recent gales, which had prevented him from lightening the vessel.[1] It will be seen by the reports from the officials of the port that the Shenandoah had broken adrift from her mooring.[2] The state of the tides further interfered with the process of getting her on the slip, which was at last effected on the 10th February. The board of officers appointed by the governor then again examined the vessel, and reported that the repairs necessary to render her seaworthy could be effected in about five clear working-days.[3] On the 14th February Lieutenant Waddell was again requested to state when the Shenandoah would be ready to put to sea, and he replied that she would be ready for launching on the afternoon of the next day; that he had then to take in all his stores and coals, and to swing the ship; and that he hoped to proceed to sea in her by Sunday, the 19th instant.[4]

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[1] Appendix to British Case, vol. i, p. 511; vol. v, p. 65.
[2] Ibid., vol. i, p. 529; vol. v, p. 79.
[3] Ibid., vol. i, p. 640; vol. v, p. 69.
[4] Ibid., vol. i, p. 518; vol. v, p. 73.
[5] Ibid., vol. i, pp. 517 and 641; vol. v, pp. 69, 70.
[6] Ibid., vol. i, pp. 520, 552; vol. v, pp. 75, 76.
[7] Ibid., vol. i, p. 642; vol. v, p. 77.
[8] Ibid., vol. i, p. 529; vol. v, p. 74.

In the meanwhile the consul of the United States had, since the arrival of the Shenandoah at Melbourne, continued to address protests to the governor, denouncing the vessel as a pirate, and contending that she was not entitled to be considered as a ship of war, and that it was the duty of the government to seize and detain her. These communications, which were accompanied by various affidavits of persons who had been taken off American merchant-vessels captured and destroyed by her, were submitted to the legal advisers of the colonial government. They reported their opinion that there was no evidence of any act of piracy committed by any person on board the ship, and that she purported to be, and should be treated as, a ship of war belonging to a belligerent power.[5] An answer to this effect was accordingly sent to the consul.[6]

On the 10th February the consul forwarded an affidavit taken before him by a man who had lately been cook on board the ship, which tended to show that men had joined her from the colony, and were at that time concealed on board of her.[7] The matter was at once placed in the hands of the police; and, evidence having been obtained to identify one of the persons suspected, a warrant was issued for his arrest on the 13th February.[8]

On the evening of the same day a police officer went on board for the purpose of arresting the men; but both on that occasion and on the following morning he was refused permission to go over the vessel for the purpose, Lieutenant Waddell pledging his word of honor as an officer and a gentleman that he "had not any one on board, had not engaged any one, and would not do so while he was at Melbourne," and declaring that he would rather fight his ship than allow her to be searched for the man.[9]

The matter was laid by the governor before the executive council
[96] on the same day. The *Shenandoah was at this time on the slip, although nearly ready to be launched. A letter was addressed to Lieutenant Waddell calling on him to reconsider his determination, and intimating that, in the meanwhile, the permission to repair and take in supplies were suspended. A proclamation was at the same time issued by the governor forbidding Her Majesty's subjects to render any aid or assist-

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[1] Appendix to British Case, vol. i, pp. 542, 643; vol. v, p. 77.
[2] Ibid., vol. i, p. 529; vol. v, p. 80.
[3] Ibid., vol. i, p. 522; vol. v, p. 78.
[4] Ibid., vol. i, p. 643; vol. v, p. 78.
[5] Ibid., vol. i, p. 515; vol v, p. 88.
[6] Ibid., vol. pp. 593, 617; vol. v, p. 88.
[7] Ibid., vol. i, p. 606; vol. v, p. 107.
[8] Ibid., vol. i, p. 536.
[9] Ibid., vol. i, p. 524; vol. v, p. 109.

to the Shenandoah, and a body of 100 police and military were or-
d down by telegraph to seize the ship. This they proceeded to do the
afternoon. About 10 o'clock in the evening four men were seen
ave the vessel in a boat pulled by two watermen. They were fol-
d and arrested, and one of them proved to be the man against
n the warrant had been issued.[1]

utenant Waddell wrote to protest against the course which had
taken. He denied that the execution of the warrant had been re-
, as there was no such person as therein specified on board. He
that all strangers had been sent out of the ship; and that, after
rough search by two commissioned officers, it had been reported to
hat no one could be found on board except those who had entered
ort as a part of the Shenandoah's complement of men. "I, there-
he wrote, "as commander of this ship, representing my govern-
in British waters, have to inform his excellency that there are no
s on board this ship except those whose names are on our shipping
s; and that no one has been enlisted in the service of the Confed-
States since my arrival at this port, nor have I, in any way, vio-
e neutrality of the port."[2] This letter was laid by the governor
his council on the 15th of February, together with one from the
f the slip. The letter stated that, should a gale of wind come on,
l be necessary either to launch the Shenandoah, or to run a great
her sustaining serious damage in consequence of her unsafe
n, and that the government must take the responsibility of
penses which might be incurred. As the object in view had
ecured by the arrest of the men, it was decided, under these cir-
nces, to withdraw the previous prohibition, and to allow the
of the vessel. Lieutenant Waddell was informed that this had
ne on the faith of the assurance he had given; but his attention
led to the fact that the four men arrested had been on board his
nd he was told that he would be expected to use all dispatch, so
sure his departure by the day named by him, the 19th.[3]

Shenandoah was accordingly launched on the evening of the 15th
ry; she reshipped, from a lighter, the stores which had been dis-
l before placing her on the slip, and, after taking on board sup-
d coal, she left Melbourne at half past 7 o'clock on the morning
18th of February, being one day sooner than was expected.

right to say that Lieutenant Waddell wrote to deny that the
en arrested had been on board with his knowledge; they had,
l, been ordered out of the vessel by the ship's police, who had
cceeded in discovering them after the third search.[4] The officers
Shenandoah also published, in one of the newspapers, denials of
nplicity in the matter on their part.

ng the two days which elapsed between the launch of the Shen-
and her departure from the colony, the most careful vigilance
joined on the authorities to prevent any violation of the foreign-
ent act. A reference, however, to the nature of the harbor, and
circumstances of the case, will show how difficult it was to take
l precautions for this purpose. Hobson's Bay, the harbor of
rne, is the inland termination of Port Phillip, a large basin of
r oval shape, some 60 or 70 miles in circuit, with a narrow en-
o the sea. Such a conformation of coast offered great facilities

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[1] Appendix to British Case, vol. i, pp. 525–527; vol. v, pp. 109–112.

[2] Ibid., vol. i, p. 644; vol. v, p. 110.

[3] Ibid., vol. i, p. 645; vol. v, p. 112.

[4] Ibid., vol. i, p. 646; vol. v, p. 113.

for sending off men from different parts of the bay, who could be shipped on board the Shenandoah either before or immediately after she had passed this narrow entrance. There was no British vessel of war at or near Melbourne to which the duty of watching or controlling the movements of the vessel could be assigned. The legal advisers of the colonial government, when consulted on the question, had declared that they were not prepared to advise that the execution of a warrant on board of her could properly be enforced at all hazards;[1] and this opinion was afterward confirmed by that of the law-officers of the Crown in England.[2] All, therefore, that could be done was to enjoin such supervision as could be exercised by the water-police of the port while the Shenandoah was at anchor, and to give orders to the pilot not to allow any boat to come alongside, or any person to come on board, from the time of her weighing anchor till he left her.[3] With regard to the first of these two measures it is not difficult to perceive that to keep effectual watch [97] *over a vessel which is shipping coals and stores in a harbor from two to three miles wide at the place where she is anchored, in the midst of some two hundred or more vessels of every kind, must be no easy matter, even if a larger force were employed than could be available for the purpose on this occasion. With regard to the latter precaution it is evident that everything must depend on the good faith of the pilot, and his ability to carry out his instructions. After the Shenandoah had left Melbourne, it became a matter of public report that some men had joined her before her departure, and the number, which was no doubt much exaggerated, was stated to be as high as fifty or sixty. The inquiries made afterward by the police resulted in the identification of some eighteen or twenty persons altogether, who had left the colony and were believed to be on board of the ship. Of these it appeared that seven had been employed in shipping coals, and they went on board in the night or early morning before her departure, on the pretense of getting paid for their work, but did not return. It further appeared that, about 9 o'clock on the night of the 17th of February, some men had been collected on the railway-pier of Sandridge, a suburb of Melbourne. The pier in question is the terminus of a railway from the town of Melbourne, and there is a communication by a steam-ferry to Williamstown, which is on the opposite side of the bay, about two and one-half miles distant, and where the patent slip and the station of the water-police are situated. The Shenandoah was at anchor in the bay between Williamstown and Sandridge. From the statement of one of the boatmen employed, the men in question must have dispersed into some wooded land a short distance off at the time when the boat of the water-police came round to that part of the harbor, and thus avoided observation. After the boat had rowed off to the opposite side the men seem to have returned in small parties, and gone off from the pier in watermen's boats, which put them on board the Shenandoah. How many of them were part of the original crew returning to the vessel from the shore, and whether any were new hands, there is nothing to show. The police constable on duty saw the boats after they had started and when they were returning, but had of course no means of investigating this question.[4] It seems indeed, from the wording of his report, as though the darkness or the distance prevented his seeing whether the boats did or did not actually go to the vessel; all that is stated is that they went in that direction. A man of the name of Robbins went up to the American consulate, where he arrived about 11 o'clock at night, and stated what was taking place. The American consul sent him back to give information to the water-police at Williamstown, a distance in all about five miles by land and water, where he must have arrived too late for any interference or inquiry.[1]

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[1] Appendix to British Case, vol. i, p. 526.
[2] Ibid., vol. i, p. 558.
[3] Ibid., vol. v, p. 84.
[4] Ibid., vol. i, pp. 551–553; vol. v, pp. 117–122.

At about 5 o'clock the same afternoon, another man, of the name of Forbes had come to the American consul with a statement that he had seen five men at Sandridge, one of whom had told him that they were going out in a vessel called the Maria Ross, to join the Shenandoah when she got into the open sea beyond the jurisdiction of the port. The consul took the man to the office of the Crown law-officers, which had been closed some time before, but where he met the Crown solicitor, who had accidentally returned. It does not fall within the powers or duties of that officer to take depositions or issue warrants, and he referred the consul to a magistrate as the proper person to go to. The consul then proceeded to the Houses of Parliament, and placed the matter before the attorney-general, who offered to lay the matter before the government if furnished with an affidavit. Instead of complying with this suggestion, the consul applied to the chief of police, who naturally declined to act without a warrant, but suggested, as the Crown solicitor had done, that the consul should apply to a magistrate for the purpose. The consul accordingly went on to a police magistrate in Melbourne. This latter, after examining Forbes, did not feel justified in granting a warrant on such testimony alone, and he advised that application should be made to the water police at Williamstown, who might be able to furnish corroborative evidence. This advice the consul did not think fit to act upon. He returned home, took the man's deposition himself, and determined to forward it to the attorney-general, to be laid before the government, but he did not do this until the following morning, after both the Shenandoah and the Maria Ross had sailed. It is not true that (as alleged in the case of the United States) "he could get no one to attend to his representations." On the contrary, they received, according to his own evidence, "patient" attention from the attorney-general, as well as from the magistrate to whom he had recourse, and they advised him what to do;[2] he did not follow that advice, and he is certainly more justly chargeable with a want of due diligence than those who, though unable to issue the war-
[98] rant he asked for, did their best to put him in the *right way to obtain it. The Maria Ross was, however, twice searched before leaving the bay, and the mate, who was afterward examined, denied most positively that she had taken any passengers, or that any men were concealed on board of her.[3]

Such, as far as is known to Her Majesty's government, is all the information which the authorities of Melbourne were able to obtain as to the alleged shipment of men from the colony on board the Shenandoah. It was furnished, for the most part, to the police by the boatmen who had been employed in putting the men on board, on the understanding that they should not themselves suffer on account of what had been done. Of the four men who had been arrested on the night of the 14th, one claimed to be an American citizen and was discharged; the other three were remanded, and, after a month's imprisonment, brought to trial. Two of them were then convicted and sentenced to further imprisonment; the third, a boy of seventeen, was discharged. The governor, in reporting these facts, announced his intention of refusing the hospitalities of a neutral port to Lieutenant Waddell and the other officers of the Shenandoah, should they revisit the colony.[1] He wrote also to the governors of New Zealand and the other Australian colonies, and to the commander of the British naval forces on the station, to warn them of what had occurred.

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[1] Appendix to British Case, vol. i, p. 587.
[2] Ibid., vol. i, pp. 587, 618.
[3] Ibid., vol. i, p. 554; vol. v, p. 120.

Having thus recounted the facts of the visit of the Shenandoah to Melbourne, Her Britannic Majesty's government proceeds to notice the more important of the complaints made in the case of the United States, respecting the manner in which that vessel and her officers were received and treated by the authorities. Some of these contradict one another. For instance, at page 426 of the Case, it is imputed as a delinquency that Lieutenant Waddell's application for permission to repair was not officially answered till after the twenty-four hours allowed by the instructions of January, 1862, for his stay had expired; a statement which is supported by no evidence, and which, from the terms of the United States consul's report to his own Government, appears highly improbable. It will there be seen that the Shenandoah entered the bay about 8 o'clock p. m. on the 25th of January,[2] and that the consul received, at 3.30 p .m. on the next day, a communication from the government respecting the prisoners whom Lieutenant Waddell desired to land; this communication having been decided on, and no doubt sent at the same time as the answer to Lieutenant Waddell's application.[3] But almost immediately afterward it is mentioned, apparently as still more reprehensible, that the officer who took Lieutenant Waddell's letter on shore returned with an affirmative answer the same night.[4] If it was wrong to delay the official answer, it is difficult to understand what exception could be taken to sending a verbal reply at once; but it will have been seen by the narrative given above, that this second statement is also incorrect, and that the bearer was only informed that the letter would receive early attention.

In the Case of the United States, objection is taken to the permission which was given to Lieutenant Waddell to take on board 250 tons of coal while at Melbourne; and a minute examination is attempted of the nature of the repairs supposed to have been made, with an elaborate estimate of the time in which they might have been completed, if pushed on with rapidity, and if nothing had occurred to delay them. "It is difficult," the Case says, "under the circumstances, to resist the conclusion that the repairs were dawdled along for the purpose of securing the recruits, and that the authorities, to say the least, shut their eyes while this was going on." At this distance of time and place, when all the particular circumstances cannot be exactly known, it seems to Her Britannic Majesty's government that it could scarcely serve any useful purpose to follow all the details of a technical argument which is founded largely on conjecture. What, indeed, could be less reasonable than that the arbitrators should now be asked, in a case of this kind, to set aside the estimates made on the spot and at the time by government officers and experienced professional men, on the strength of a merely conjectural estimate suggested by the United States, which takes no account of local circumstances, and, on no better ground than this, to impute negligence and connivance to the authorities of an important British colony?

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[1] Appendix to British Case, vol. i, p. 550.

[2] Appendix to the Case of the United States, vol. vi, p. 588.

[3] See Appendix to British Case, vol. i, p. 511. It is stated in one of the newspapers sent home by the American consul, that the reply was known on board the Shenandoah between 3 and 4 o'clock, (Appendix to Case of United States, vol. vi, p. 652.)

[4] This is stated on the authority of a published account of the cruise of the Shenandoah by one of her officers, which in other respects also gives a very inaccurate account of the communications between Lieutenant Waddell and the colonial authorities.

The Shenandoah arrived at Melbourne during a period of exceedingly severe weather.[1] She was obliged, according to the showing of the United States themselves, to depend upon her steam power, on account of the inadequacy of her crew. In this manner she [99] *had expended a considerable portion of her original supply of coal, and had worn out the machinery of her screw. She thus came into Melbourne in a partially disabled state, and requested and obtained permission to make good her defects and to replenish her coal. The United States have sought to draw a contrast between her treatment there, and that of a vessel of the United States Navy at Barbados. The difference, however, really lay not so much in the treatment as in the circumstances of the two vessels and the temper of their respective commanders. The Shenandoah was not allowed to remain in port on the mere word of Lieutenant Waddell, but was twice subjected to the examination of a board of officers appointed by the governor for the purpose, who certified that she was in need of repairs. To this examination Lieutenant Waddell assented without any demur. Captain Boggs, on the other hand, who was distant from the ports of his own country about as many hundreds of miles as Lieutenant Waddell was thousands, took offense at a request that he would give an assurance of his inability to put to sea, and preferred to leave the port at once. It was not the intention of the orders of January, 1862, that a vessel should be dismissed summarily from a port in a distant colony, many thousands of miles from her own ports, in a crippled state, in which her crew would be inadequate to manage her. It is objected that the repairs were "dawdled"—and this when, a few pages before, attention has been drawn[2] to a passage in one of Lieutenant Waddell's letters, to show that he had commenced the repairs at once, before a report had been furnished of what was required. On reference to the copies of correspondence sent home at the time, and to those since received from the present governor, it is found that the sentence referred to ("the other repairs are progressing rapidly") did not occur in Lieutenant Waddell's original letter, though inserted in the copy published in the colonial newspapers, from which the quotation, in the Case of the United States, is made.[3] It is, however, true that, with a view to complete the repairs as soon as possible, men were employed to calk the vessel as soon as permission to repair was received. The nature of the weather, which was very rough, probably rendered it impossible to send down a diver to examine the vessel for the first few days, and the state of the tides seems to have occasioned some further delay in getting her on to the slip, but in other respects the repairs were pushed on with all possible rapidity and completed within the time estimated for them. Lieutenant Waddell expressed throughout his anxiety to shorten his stay, and probably with truth, if, as may be gathered from the correspondence, his men were deserting. The steps taken for examining the vessel, the vigilance enjoined on the authorities of the port, the daily reports required from them as to the progress of repairs, and the reiterated request to Lieutenant Waddell to fix a day for his departure, certainly show no laxity or indisposition on the part of the colonial government to prevent any abuse of the permission granted by it.

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[1] Case of the United States, p. 421.

[2] Ibid., p. 427.

[3] See Appendix to British Case, vol. v., p. 68.

On the question of the enlistment of men, and the proceedings taken against the offenders, it is remarked, in the Case of the United States, that the authorities "carefully let alone Captain Waddell and his officers, who had been violating Her Majesty's proclamation and the laws of the empire, and they aimed the thunders of the law against an assistant cook." The facts are, in the first place, that there was evidence against the seamen arrested, and suspicion only against the commander; and, in the second place, that the arrest, on a charge of this kind, of the commanding officer of a foreign ship of war who may happen to be ashore (on board, of course, he is secure from it) is a far graver matter than seems to be supposed, and is, indeed, an extreme measure which only very extraordinary circumstances could justify. The local authorities received up to the last the most positive assurances from Lieutenant Waddell that he had not added to his crew, and had not violated, and would not violate, the neutrality of the port. They took every precaution in their power to insure the performance of this promise; and if their efforts were not altogether successful, this must be attributed to the difficulties they had to deal with, the inadequacy of the means at their disposal, and to the reliance which they placed on the word of one whom they knew to be an American officer, and might, therefore, reasonably believe to be a gentleman and worthy of credit.

A case (with which the arbitrators are already acquainted)[1] of the reception of some men on board a vessel of war of the United States at Cork shows that such occurrences may, at the time, escape the notice not only of the authorities, but also of the commander of the vessel. On the occasion referred to, sixteen men were shipped on board the United States war-steamer Kearsarge. The fact was not known until the vessel had sailed for France; and on her return to Cork, [100] a month afterward, the men were sent on shore by * the captain, with a declaration that they had been shipped without his knowledge and contrary to his instructions. Six of the men were prosecuted, but were discharged without punishment, as having probably been unaware of the nature of the offense they were committing. Evidence having been produced to implicate some of the inferior officers of the vessel, representations were addressed to the Government of the United States upon the subject, and the latter expressed their willingness to institute an investigation when the Kearsarge returned home. The course adopted on this occasion certainly did not differ, on the side of severity, from that pursued toward the Shenandoah. Nor is it doubtful to Her Majesty's government that if on that occasion Captain Winslow had been arrested in the streets of Cork, this would have been regarded as somewhat more than due diligence by the Government of the United States.

There is a further statement in this part of the Case of the United States which Her Britannic Majesty's government approaches with regret.

At page 430 mention is made of a discussion which took place in the legislative assembly at Melbourne as to the reception of the Shenandoah and her supposed identity with the Sea King. The chief secretary stated that "in dealing with the vessel they (the government) had not only to consider the terms of the proclamation of neutrality, but also the confidential instructions of the home government." On this it is remarked: "Here the United States learned for the first time that, in addition to the published instructions which were made known to the world, there were private and confidential, *and perhaps conflicting*, instructions on this subject." Her Britannic Majesty's government thinks that it will best consult its feelings of self-respect by leaving unnoticed the insinuation conveyed in this passage. It is no doubt true—and to persons possessing ordinary acquaintance with the details of administrative government, it cannot appear surprising—that, in addition to the published instructions to governors of colonies, other instructions were sent from time to time, some of them explanatory of those published instructions, others supplementary to them, as cases arose to show the necessity of such explanations and additions. Such of these as were sent to the governor of Victoria, and have any bearing on the matter, are now laid before the tribunal in the Appendix.[1] Among these instructions will be found one dated the 12th of December, 1863, which inclosed copies of certain correspondence respecting the visit of the Alabama to the Cape of Good Hope. All the material papers in this correspondence have already been laid before the tribunal.[2] Among them will be found a report from the English law-officers of the Crown, in which the following passage occurs:

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[1] See British Case, p. 154.

> With respect to the Alabama herself, we are clearly of opinion that neither the governor nor any other authority at the Cape could exercise any jurisdiction over her, and that, whatever was her previous history, they were bound to treat her as a ship of war belonging to a belligerent power.

It will have been seen that these last words were reproduced in the answer returned to the representations of the United States consul at Melbourne, on the 30th of January, 1865.[3] That these were the particular papers alluded to by the chief secretary is moreover obvious from the context of the speech, in which he mentions that the government had "before them the case of a vessel in exactly the same position as the Shenandoah." It may not be within the knowledge of the tribunal that the reports of the English law-officers of the Crown to Her Majesty's secretary of state for foreign affairs have, according to invariable custom, been hitherto considered as documents of a strictly confidential nature, to be made known to none but the executive officers of the government. This rule has now for the first time been departed from, through the anxiety of Her Britannic Majesty's government that the arbitrators should have before them all materials which could be made available for enabling them to form a correct judgment on the questions submitted to them.

Into the subsequent history of the Shenandoah it is needless to enter. It has been accurately told in the British Case, and there is clearly nothing in it which could impose any responsibility whatever on this country.

The United States must be well aware that, on account of the original outfit of the Shenandoah, they have no just claim against Great Britain. A sense of this, indeed, plainly betrays itself in the Case. An effort is therefore made to found a claim upon the circumstance that this vessel was admitted, in a remote colony of the British Empire, to the ordinary hospitalities of a neutral port, and upon what occurred during her visit there. The charges which it is endeavored to establish

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[1] Appendix to British Case, vol. v, pp. 125-131.
[2] Ibid., vol. i, pp. 300, 306, 312, 322.
[3] Ibid., vol. i, p. 593.

against the authorities of the colony, and through them against
[101] Great Britain, are, in substance, two. One is, that she *was
suffered to repair her steam machinery, which is admitted to have been in need of repair, although (it is objected) she was not shown to be unseaworthy as a sailing ship. It would be difficult to imagine a much less reasonable complaint. The colonial authorities were right in giving this permission, which was given at Brest to the Florida, in spite of the remonstrances of the United States minister, and which is thoroughly sanctioned by custom. They would, indeed, have been guilty of a reprehensible refusal of ordinary hospitality if they had not given it. The other charge is, that the vessel obtained in the port some addition to her crew, and that this was done with the connivance of the authorities of the colony. As the chief proof of connivance, it has been insisted that the ship remained in the port, undergoing repairs, a few days longer than the United States suppose to have been absolutely necessary. Again, to prove even this, which, if established, would be not merely inconclusive, but almost immaterial, there is a struggle against plain facts; and there is an endeavor to substitute conjectural estimates for those made on the spot, and at the time; circumstances are passed over which should have been taken into account; there are imputations of inattention where there was none, and suggestions of bad faith, to which the best answer is silence.

Such is the character of the argument of the United States on this point. It has been answered step by step. But Her Majesty's government deems it right to add one observation, the truth of which will hardly be disputed in any maritime country. The act here alleged—the recruitment of seamen in a neutral port—is one which is difficult and well nigh impossible for the local authorities to prevent altogether, by any reasonable precautions of their own, which would not be deemed offensive by a belligerent. It is necessary, therefore, either wholly to exclude belligerent ships of war from access to, and refuge in, neutral harbors, or to place some reliance on the word of the commanding officer, and on that honorable understanding which, while it surrounds the vessel on her entrance with a peculiar immunity from the exercise of local jurisdiction, binds her at the same time to respect the sovereignty and neutral rights of the nation whose hospitality she enjoys. It is practically necessary to rely much on this understanding, and it is customary to do so. It has never been held that the duty of the neutral authorities is to surround a foreign ship of war with spies, to dog the steps of her officers, refuse credit to their solemn assurances, or issue warrants against them on suspicion. No neutral power would undertake to do this, and no belligerent would endure it patiently. Great Britain has never hitherto hesitated to trust American officers, as she trusts those of other countries; and she did not deem herself bound to withdraw that customary confidence from officers whom civil dissension had armed against their own country, and who were engaged in an unhappy contest, which she sincerely deplored.

[102] *PART VIII.

THE CLARENCE, TACONY, ARCHER, TUSCALOOSA, TALLAHASSEE, CHICKAMAUGA, AND RETRIBUTION.

In respect of these vessels (with perhaps one exception, which will be noticed presently) no failure of duty on the part of Great Britain is expressly or distinctly alleged by the United States. As to the first four, it is only insisted that, as they were armed and employed as tenders by vessels in respect of which there is alleged to have been a failure of duty, Great Britain ought to be charged with the losses occasioned by them to the United States.

Part VIII.—The Clarence, Tacony, Archer, and Tuscaloosa.

THE TALLAHASSEE AND CHICKAMAUGA.

Her Majesty's government has little information respecting the earlier history of these two vessels, beyond what may be gathered from documents presented to the arbitrators by the United States. From this source it may be collected that they were two out of a number of steamers built in England for blockade-running, and all alike, or nearly alike, in construction. They were built for speed, with double screws. There is no pretense for saying that either of them was, either wholly or in part, specially adapted within British territory for warlike use; nor has this been alleged by the United States. It is clear that they were without any such special adaptation. Both of them had been noticed, before they originally left England, by the United States consular officers, who were always on the watch to detect any indications of such an object or purpose; but as to neither of them was the least suspicion expressed that she was fitted or intended for any employment other than blockade-running. The Tallahassee is, indeed, in the Case of the United States, alleged to have been "fitted out to play the part of a privateer;" and, for the evidence of this, the arbitrators are referred to a letter from Mr. Adams to Earl Russell. It might have been inferred from such a reference that Mr. Adams had asserted the fact, or at least expressed a suspicion of it, at the time. But the letter is dated 15th March, 1865, when it had become well known that the ship had for a short period been taken from her usual employment and used in making prizes.

The Tallahassee and Chickamauga.

Although the assertion mentioned above has been made, unsupported by a particle of evidence, respecting the original outfit of the Tallahassee, the United States have not added to it another, without which it is not relevant to the questions at issue: namely, that the British government had reasonable ground to believe that the vessel was intended to be used for war. It would be of no avail to show (were it possible to do so) that the Tallahassee was fitted for war (which she was not) or intended to be used for war, (of which, again, there is no proof at all,) unless it could also be shown that the government of Great Britain was or ought to have been, in some way cognizant of that intention. But this is nowhere so much as alleged or suggested on the part of the United States.

As these vessels were not constructed or specially adapted for war, so neither were they armed, fitted out, or equipped for war within British territory. They were fitted out for a quite different purpose. There is, indeed, so far as Her Majesty's government is aware, no evidence that they were built for the confederate government at all; although, like some other vessels which had originally been built for private trade, they were afterward found in the hands of that government.

In the summer of 1864, when the greater part of the southern seacoast had fallen into the hands of the United States, and access to the remaining ports of the confederacy (now more effectively blockaded) was becoming a matter of greater and greater difficulty, the confederate government appears to have tried the experiment of putting guns into one or two blockade-running ships and sending them out to cruise. The only vessels with which this experiment was tried, so far as Her
[103] Majesty's government is aware, were *the Atlanta and Edith, which were armed and commissioned, one after the other, under the names of the Tallahassee and Chickamauga. That the resolution was formed, in the case of the Chickamauga at any rate, after the ship had come into the possession of the confederate government, and in consequence of her being found fast under steam as a blockade-runner, is admitted in the Case of the United States. The expedient of thus arming and commissioning merchant-ships thus bought or hired for the purpose had been resorted to by the Government of the United States on a very large scale at the commencement and during the earlier part of the war. Vessels of all sorts and sizes, which could be made suitable (to borrow an expression from the Case of the United States) for "the sort of war carried on" by that government, were procured by scores, and employed as fast as they could be found.

But neither the Tallahassee nor the Chickamauga was found well fitted for this new employment. The latter appears, from the statements of the United States, to have been only fifteen days at sea. The former, after a cruise of about three weeks, was "found to be ill-adapted for the purposes of war," and sold to a private merchant, who gave her the name of the Chameleon.[1]

It is represented in the Case of the United States that the Tallahassee, before her reconversion, cruised for a short time under the name of the Olustee. There is no evidence, however, of the identity of the Tallahassee with the Olustee, beyond a statement by one Boreham, whose ship was captured by the Olustee, that his ship's carpenter, who had previously been captured by the Tallahassee, thought they were the same.[2]

The visit of the Chickamauga to Bermuda will be noticed in a subsequent section. Here it is enough to say that the United States are in error as to the accommodation obtained by her at that colony and the coal shipped there.

The United States notice the facility with which one of these vessels

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[1] Mr. Wilkinson to Mr. Gilbert, Appendix, vol. v, p. 151. The Atlanta brought cargo from Wilmington to Bermuda early in July, 1864, and cleared outward again with cargo, as a merchant-ship, immediately afterward. At the end of July or beginning of August she may have been armed at Wilmington, and dispatched thence as the Tallahassee; and she is said by the United States to have returned to Wilmington on the 25th of August.

[2] Appendix to the Case of the United States, vol. vi, p. 732.

(the Tallahassee) was reconverted into a ship of commerce, in which character she was afterward suffered to enter and remain in British ports; and it appears to be suggested that this ought to have been in some way prevented by Her Majesty's government. In the case of this vessel, the question whether the lieutenant-governor of Bermuda had acted rightly in treating her as no longer a ship of war was referred to the law-officers of the Crown, who reported as follows:

> With respect to the first question contained in the dispatch from the lieutenant-governor of Bermuda, we are of opinion that he exercised a sound discretion in treating the Chameleon (after he had satisfied himself of the truth of the representations made by her master) as a merchant-vessel belonging to the country of one of the belligerents. It is competent to the government of either belligerent to sell or transfer a ship of war to a private merchant, or to change the character of a vessel from that of a ship of war to that of a merchant-vessel, if the government chose to trade on its own account.
>
> To the second question, we answer that the merchant-vessels belonging to the citizens of both belligerents, and registered in their ports, ought to be admitted to the harbors of Her Majesty on the same footing. The absence of a formal recognition by Her Majesty of the Confederate States does not affect the principle of strict neutrality upon which the vessels of both belligerents are so admitted.[1]

A similar question was raised when she came to Liverpool, and was resolved in the same way.

It is undoubtedly true that vessels, not originally designed for war, which have been temporarily employed for that purpose, like the two vessels in question, may be very easily reconverted into ships of commerce; but neutral powers cannot be called upon to exclude such a vessel from their ports on account of her former employment, nor to treat her otherwise than as a ship of commerce, if they have no reason to doubt the fact that she is no longer commissioned and armed for war. The vessels armed and commissioned in 1861 and 1862 by the Government of the United States were at liberty, when that employment was over, to return to their original trade; and for a neutral government to refuse to treat them either as ships of war when in commission, or as ships of commerce afterward, would have been wrong for exactly the same reasons which would have made such a refusal wrong in the case of the Sumter, (Gibraltar,) or of the Tallahassee, (Chameleon.)

The arbitrators will look in vain, in the case of the United States, for any failure of duty charged against Great Britain in respect of [104] either of these vessels. It is not alleged *that, in respect of either of them, this government failed to exercise due diligence to prevent a violation of any obligation specified in the three rules, or of any other neutral duty. The United States seem to have found themselves unable to make any definite charge; yet they nevertheless ask the arbitrators to hold Great Britain "responsible for the acts" of both these ships, and to award to the United States, on account of them, compensation calculated on the same basis as in the cases of the Alabama itself.

Her Majesty's government has here no charge to meet, no argument to answer; and it has a right to call upon the tribunal to dismiss at once these utterly groundless claims.

THE RETRIBUTION.

The Retribution.

We now arrive at the case of the Retribution. The account given of this vessel is, that she was built in the State of New York; was, in 1861, seized by the confederate government; was converted from a steamer into a sailing-ship in the waters of North Car olina, and then armed and employed by that government as a cruiser. It is not alleged that she ever received any outfit or equipment in or from British territory. What is alleged is merely this, that on one occasion she took a prize, (the Hanover,) captured by her near San Domingo, to Long Cay, an island of the Bahama group, "and there sold the cargo without previous judicial process;" and that, on another occasion, the Emily Fisher, a prize captured "off Castle Island," (one of the Bahamas,) "was taken to Long Cay, and, notwithstanding the protest of the master, and in the presence of a British magistrate, was despoiled of her cargo, a portion of which was landed, and the balance willfully destroyed. Upon the strength of these allegations alone, the United States ask the arbitrators to hold Great Britain "responsible for the acts" of the Retribution.[1] Claims for the value of prizes captured by her are inserted in the general list of claims; and she is not distinguished from the other vessels, in the vain "pursuit" of which the Navy of the United States is represented as having been engaged. This is asked, "not only for the general reasons heretofore" (in the Case of the United States) "mentioned as to this class of vessels, but because, in the case of each of the captured vessels above named, the acts complained of were done within Her Majesty's jurisdiction." The British government is not exactly informed what general reasons for demanding compensation from Great Britain are considered by the United States to be applicable to the class of vessels to which the Retribution belonged —that is to say, vessels built in the United States, wholly armed, fitted out, and commissioned within confederate territory, and never even furnished with coal in any British port; but it is right to call the attention of the tribunal to this admission, that the claims of the United States are founded on reasons which they suppose to extend to vessels of this latter class.

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[1] Appendix to British Case, vol. v, p. 153.

The British government might fairly decline to enter into any discussion, before the tribunal, of claims such as those made on account of this ship, since they are obviously of a different class from those "generically known as the Alabama claims," and cannot properly be reckoned among them. Her Majesty's government prefers, however, to state the facts, inaccurately referred to by the United States, so far as it is acquainted with them.

The case of the Hanover appears to have been as follows: In December, 1862, a schooner arrived at the port of Fortune Island, or Long Cay, and was reported by her master (or the person who appeared to be and acted as such) to have run ashore—no uncommon accident in those seas —on a neighboring islet, and to be in distress. Long Cay is a small island or strip of land, belonging to the Archipelago of the Bahamas, and about two hundred and forty miles from the seat of government. From the ship's papers, which were regular, it appeared that she was the schooner Hanover, bound from Boston to Havana, or to seek a market; the master further stating that his instructions were to dispose of the cargo, purchase with the proceeds a cargo of salt, and try to run the blockade. The master's name was shown by the ship's papers to be Washington Case; and it was in that name that the person who represented himself to be master signed the manifest, bills of lading, and other documents, entered his vessel at the revenue office, and finally cleared her, having loaded a cargo of salt at Long Cay. The magistrate of the district, who resides in the island of Inagua, but happened to be at Long Cay at the time, went to the place, and questioned the man, but had no reason to doubt his identity or the truth of his story; nor was there, indeed, any circumstance to suggest a doubt. Some words casually let fall by a drunken seaman after the supposed master had left the island, (which he did by another vessel, leaving the Hanover under the command of the mate,) first gave rise to a suspicion that he had been passing under a name which was not his own; but there was no reason to suspect that the vessel had been a prize. No intimation of the [105] circumstances ever *reached the colonial government till the 11th March, 1863. A person residing at Nassau, as agent of American underwriters, then addressed a letter to the governor, stating that the Hanover had been captured by the Retribution; and that the person who had represented himself to be Case was, in reality, one Locke, otherwise Parker, the captain of the Retribution.[1]

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[1] Case of the United States, pp. 390, 391.

It is obvious that these facts, assuming them to be true, impose no liability on Her Majesty's government. If the orders of 1st June, 1861, which forbade prizes to be brought into British ports, had not been issued, the Hanover might have been openly brought in and her cargo sold in the Bahamas, and the United States would have had no right to complain. The captain of a confederate ship contrived, by forgery and fraudulent personation, to violate these orders, and by so doing rendered himself amenable to British law. Locke was afterward twice arrested at Nassau for this offense. On the first occasion he forfeited his bail and left the island; on the second he was brought to trial, but was acquitted for want of evidence. Proof of the facts which it was necessary to establish could only be given by some one who had been on board of the Hanover, or of the Retribution, at the time when the capture took place; and although the agent of the American underwriters, acting at the instance of the attorney-general, sent to the United States to endeavor to secure the attendance of the master or some of the crew of the Hanover, no such testimony could be obtained.[2]

It may be added that, while Locke was in prison awaiting his trial, an application was made by the Government of the United States for his extradition, on a charge of his having been concerned in an alleged act of piracy, having no connection with the case of the Hanover. Earl Russell wrote in reply:

> It appears to Her Majesty's government that the United States Government are not entitled to obtain the extradition of Locke until he shall have been tried for the offenses alleged to have been committed by him against British law, and, if convicted, shall have undergone any sentence which may be passed upon him But Her Majesty's government are unwilling that, in consequence of any delay on this account in the extradition of Vernon Locke, the means of supporting the graver charge against him should be weakened; and I have, therefore, to state to you that Her Majesty's government will waive their right to prosecute Locke for the offenses of conspiracy and forgery, if the evidence upon the charges arising out of the seizure of the Chesapeake shall prove to be sufficient to justify extradition by the government of the Bahamas.[3]

It does not appear that the Government of the United States made any attempt to produce the evidence which is required by law to support a demand for extradition.

Of the case of the Emily Fisher, Her Majesty's government now hears for the first time, although it is said to have happened nearly nine years ago. No complaint appears to have been made to the colonial government about this vessel; and no intimation that anything illegal had occurred in relation to her seems to have been given to the attorney-general or any official connected with the administration of criminal

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[1] Appendix to British Case, vol. v, pp. 22, 165.
[2] Ibid., p. 187.
[3] Ibid., p. 185.

law in the colony, although the agent for American underwriters, whose duty it would have been to bring forward the case, was, during the year 1863, in constant communication with the attorney-general in reference to that of the Hanover. The then collector at the port of Long Cay is now dead; and the time is past when authentic information of the facts could be obtained.[1] Evidence produced under such circumstances ought not (if received at all) to be accepted without very close scrutiny. The evidence offered by the United States is that of the owners of the ship, (who were not present, and could have no personal knowledge of the matter;) of one, Sampson, who represents himself as having been employed at that time as a "detective" in the Bahamas by the American Government; and of the master of the Emily Fisher. Sampson swears that all the facts alleged respecting the capture of the Emily Fisher and the subsequent transactions are true "within his personal knowledge," and that he testified to them in 1866, in a case tried before a court in New Jersey.[2] On reference to the published proceedings of that case, it will appear that he gave no such evidence, although it would have been extremely material. He then swore only that he had seen the Retribution at Long Cay, lying outside of the Emily Fisher, and had been introduced "by an acting magistrate at Long Cay" to her officers, with whom he had had "a general talk about the difficulty with the North and South."[3] That he should have had personal knowledge of circumstances which are stated to have occurred at a great distance before the two vessels arrived at Long Cay, where he
[106] was, is obviously impossible; and *the American Government is
well aware that such testimony would be at once rejected in an American court as it would be in a court of Great Britain. The evidence, therefore, reduces itself to that of Staples, the master. Staples alleges in effect that he was captured off an islet called Castle Island, nearly two days before he arrived at Long Cay; that his captor was in league with some wreckers, (persons whose trade it is to make profit by saving vessels abandoned or in distress,) and ran the ship aground, when the wreckers took possession of her; that she was afterward taken to Long Cay, in company with the Retribution; and that "he (the master) was not able, when there, to obtain possession of the brig until after he had bargained with the wreckers to pay them 50 per cent. on the cargo and 33⅓ per cent. on the vessel; when, after making affidavit of his being the master, he was placed in possession by the collector, and went on board." He adds that "he was told by the captain of the Retribution that the wreckers were to pay him something handsome, and the deponent believes they did so;" and that he "was obliged to accept the wreckers' terms at the port of entry, because the brig lay under the guns of the privateer, and the authorities declared their inability to protect him." He was "told by the authorities that, though the law would not allow the privateer to touch the brig, if he wished to do so they had no means of preventing him."[4] What is here alleged, and may be true, is a conspiracy between the captain of the Retribution and the wreckers to represent the Emily Fisher not as a prize to the Retribution, but as having run aground and been got off by the latter, and thus to enable the wreckers to extort a large salvage, for which they were to pay a sum of money to Locke. Locke would thus be enabled to make profit by a prize which he would otherwise have

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[1] Appendix to British Case, pp. 17, 23.

[2] Appendix to Case of the United States, vol. vi, p. 736.

[3] Appendix to British Case, vol. v, p. 196.

[4] Appendix to Case of the United States vol. vi, p. 738.

been obliged to release or destroy; and the fact of his having recourse to this circuitous and fraudulent transaction proves that he did not venture to attempt an actual sale of the ship or cargo even in this remote and unfrequented spot. Nothing is said about "the presence of a magistrate." Nor is anything said (which might have been expected) about a "protest" by the master; probably he was afraid to make one while his vessel was under the guns of the Retribution, against which the "authorities," apparently the local revenue officer, told him it would be impossible to protect him, the port being a very small place in a remote island. It is not even stated that he ever told the authorities what had occurred before his arrival at Long Cay. He paid the salvage demanded, regained his ship and part of his cargo, part having been stolen or wasted, and left the island.

It is possible that, on these facts, supposing them to be true, the owners of the ship and cargo may have been entitled to legal redress against the persons concerned in defrauding them of their property; and, if so, they might probably have obtained such redress if they had taken the necessary steps at that time. They took no steps, however; they did not even make complaint or give notice of what had occurred to the colonial government; and now, nearly nine years afterward, when authentic information cannot be obtained, the United States bring forward this case, not as a ground for making compensation to the owners of the Emily Fisher and her cargo, but in support of the grave charges against the British government which they allege before this tribunal, and of a claim to hold Great Britain liable for all the acts of the Retribution. Her Majesty's government denies that the facts, if proved, argue any failure of international duty on the part of Great Britain, or furnish any evidence of such a failure.

*PART IX.

RECEPTION OF CONFEDERATE CRUISERS IN BRITISH PORTS.

Part IX.—Reception of confederate cruisers in British ports.

It has been thought best to treat collectively the various complaints scattered throughout the Case of the United States, as to the "excessive hospitality" which is alleged to have been extended in British ports to the vessels of war of the Confederate States, in comparison with the "discourtesy" with which vessels of the United States are said to have been treated under similar circumstances. These complaints may be divided under three heads: (1) the amount of supplies granted to confederate cruisers before any limitation was placed on such supplies by the regulations issued by the British government on the 31st of January, 1862; (2) the alleged disregard of those regulations in the case of confederate vessels; and (3) their alleged rigid enforcement against vessels of war of the United States.

As regards the first question, there were but two vessels of war of the Confederate States which visited British ports before the issue of the regulations of January 31, 1862—the Sumter and the Nashville. The facts as to these two vessels have already been stated, and it is only necessary to add a few words to show how their proceedings, coupled with those of the United States ships, and the representations of the United States Government, led to the adoption of the regulations.

The Sumter and Nashville.

The reception of the Sumter in the ports of Brazil, and of the neighboring possessions of Great Britain and the Netherlands, in the summer and autumn of 1861, had given rise to warm remonstrances on the part of the United States, and they had urged on each of the three powers the expediency of placing restrictions on the hospitality to be accorded to what they termed the "piratical" vessels of the insurgents. The governments of Brazil and of the Netherlands, no less than that of Great Britain, had maintained that the Sumter must be regarded as a vessel of war of a belligerent power, and that whatever restrictions might be placed on the stay of such vessels in their ports must be applied equally to the vessels of war of the United States. Mr. Seward, however, continued to press the suggestion. Lord Russell expressly stated to Mr. Adams on the 19th December, 1861, that the reason why no such limitation had hitherto been enforced by Great Britain was that it might have seemed churlish toward vessels of the United States Navy.[1]

On the 24th January, 1862, Mr. Adams wrote to his Government, announcing that the Sumter, after repairing at Cadiz, had gone into the port of Gibraltar; and he added, "This tendency to take refuge in British ports is becoming so annoying to the government here, that I shall not be supprised if the limit of twenty-four hours' stay be soon adopted."[2]

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[1] Appendix to Case of the United States, vol. i, p. 344.

[2] Executive Documents, 1861-'62, No. 104, p. 70.

News had about the same time been received of the attempt to form a coal-depot for the United States Navy at Nassau, and of the presence at that port of a vessel of war of the United States, which, by having its steam up, constantly ready to start, kept all the shipping in the port in alarm. The Nashville, which had been in the harbor of Southampton since the 21st November, had refitted, and was ready for sea. She was closely watched by the United States steamer Tuscarora, whose commander was pursuing the same course as the captain of the Flambeau at Nassau, and, by keeping his steam up and having slips on his cable, was virtually keeping the Nashville blockaded in a neutral port.[1]

Under these circumstances, the British government determined that the Nashville and Tuscarora should be desired to leave British waters at a date to be fixed, with an interval of twenty-four hours between their respective departures; and a few days afterwards, on the 31st January, general rules were issued to provide for such cases in future. Captain Craven, of the Tuscarora, after some altercation with the authorities, quitted the port of Southampton, but returned again [108] to British waters in its vicinity just as the Nashville *was leaving. He was warned that he was not to sail again until twenty-four hours after her departure, and complied, though complaining that "a just and rigid impartiality did not appear to have been extended towards him."[2] In a dispatch dated the 7th February, 1862, and published by the Government of the United States at the time, but of which only a short extract is given in the collection now appended to their Case, Mr. Adams remarked:

> The impression here is that he (Captain Craven) allowed himself to be completely outwitted. He will doubtless lay the blame on the action of the people and government of this country; my own opinion is, that if he had been a little more cool and quiet, he would have fared better.[3]

Mr. Adams's anticipations were correct, as will appear from Captain Craven's report to his Government, now printed in the Appendix to the Case of the United States,[4] where he complains bitterly that the new regulations deprive him of "the ability of cruising on this (the British) coast," and speaks of the measures taken to preserve the neutrality of British waters as "collusion on the part of the authorities, to effect the escape of the privateer."

It may be as well to mention at once that the Nashville arrived at Bermuda, on the return voyage from Southampton, before the receipt in that colony of the regulations of January 31, 1862. There was at the time only a monthly mail to Bermuda; the regulations could not be forwarded until the latter half of the month of February, and were received there on the 5th March, some time after the Nashville had left. The statement, therefore, in the Case of the United States,[5] that the permission given to the Nashville to take on board a supply of coal was an infraction of these regulations, is erroneous. They were, according to their terms, only to take effect six days after their notification in each colony, and the governor was not even aware of their existence at the time of the Nashville's visit.

From Southampton the Tuscarora proceeded to Gibraltar, for the purpose of watching the Sumter; and there Captain Craven involved himself in a dispute with the authorities. The Sumter had arrived in that port on the 18th of January, 1862, before any limitation had been placed on the stay of vessels of war of the two belligerents in British ports. The regulations of the 31st of January, restricting the stay of such vessels to twenty-four hours, except in special cases, were received and published by the governor on the 11th of February, coming into force on the 18th. The Tuscarora arrived on the 12th, after the publication of the rules, but before they had come into force. Copies of the rules were sent in identical letters to the commanders of both the Sumter and Tuscarora on the 12th February; but it was the opinion of the governor[1]—and that opinion was confirmed by the home government—that neither vessel came under the operation of those rules, so far as their stay in the port was concerned. Captain Craven, however, without communicating with the governor on this point, withdrew to the neighboring Spanish anchorage of Algeciras, from whence the boats of the Tuscarora passed backward and forward to Gibraltar, rowing round the Sumter on the way; and he wrote to the governor inquiring why the Sumter was allowed to remain "in undisturbed possession of her anchorage," and protesting, "on behalf of the United States, against what appeared to be a departure from the rules which require that neutrals should be impartial and honest." It could not but be expected that such an imputation should draw an indignant reply from the governor. The latter was, however, instructed to allow the boats of the Tuscarora to come into the port, provided they caused no annoyance to the Sumter.[2] That the Sumter, when she eventually left Gibraltar as a merchant-vessel, in a gale of wind, should have escaped capture by the vessels of war of the United States,[3] is certainly not to be attributed to any undue partiality on the part of the British authorities. Nor can Her Britannic Majesty's government admit that there was any want of proper courtesy or hospitality shown to Captain Craven. The Tuscarora took on board 150 tons of coal at Southampton, on the 10th of January; she received further coal, the amount of which is not known, off Cowes, on the 4th of February.[4] On his return to the English coast, in June, 1862, Captain Craven disregarded the rules of which he had complained, by coaling three times, within two months, at different British ports.

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[1] Appendix to British Case, vol. i, p. 114.
[2] Appendix to British Case, vol. ii, pp. 124, 125.
[3] Executive Documents, 1861-'62, No. 104, p. 38.
[4] Vol. vi, p. 59.
[5] Page 316.

[109] *EXECUTION OF THE RULES OF JANUARY 31, 1862, AT NASSAU.

Execution of the rules of January 31, 1862, at Nassau.

The rules of the 31st January, 1862, contained general limitations as regards the stay of belligerent vessels of war, and the supplies to be granted to such vessels in British ports. They also contained special provisions with regard to the Bahama Islands. No vessels of war of either belligerent were to be allowed to enter the port of Nassau, or other ports, roadsteads, or waters of those islands, except by permission of the governor, or under stress of weather. The Bahama Islands were thus placed on an entirely different footing from any other British colony; the treatment of the United States vessels of war there must be considered separately, and cannot, with justice, be contrasted with the reception of confederate cruisers in other colonies, as is done, in one instance, in the Case of the United States, (p. 288.) A comparison is there attempted to be drawn between the reception of the Florida at Bermuda, and the refusal of the governor of the Bahamas to allow the Honduras to anchor in the harbor of

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[1] Appendix to British Case, vol. ii, pp. 19, 23, 25, 29.

[2] Ibid., p. 41.

[3] Ibid., p. 57.

[4] Ibid., p. 125.

Nassau. It is obvious that there is no real similarity between the two cases. At Nassau there was a special prohibition against the admission of belligerent vessels of war; at Bermuda there was no such prohibition. The Florida, moreover, was declared by her commander to be in need of repairs. No such reason was alleged by the commander of the Honduras for his application. The latter vessel had been sent to the Bahamas to assist the crew of the San Jacinto, which had been wrecked off the Abaco Islands, a group of the Bahamas to the north of New Providence. She was there allowed permission to anchor by the authorities for the purpose of her visit, and from thence she proceeded to Nassau, in order to obtain specie for the payment of salvage money to the inhabitants of Abaco who had been instrumental in saving the wreck. The governor did not consider that the emergency was sufficient to justify his granting special permission to the Honduras to anchor. The captain came on shore to urge a reconsideration of this decision, but the governor did not see grounds for altering it; and he suggested that the captain might take back the specie at once, or, if that were impossible, the consul might undertake to forward it to Abaco. The captain returned to his vessel, but, in defiance of the quarantine regulations, as well as of the spirit of the governor's decision, he and some other officers of the Honduras landed the next morning, called at the United States consulate, purchased some stores, and returned to the vessel. The governor took notice of this by addressing a very temperate remonstrance to the consul; he acted rightly in doing so; and Earl Russell expressed this opinion when the matter was brought to his notice by Mr. Adams.[1]

> Nassau [he said] is a position from which, on the one hand, confederate privateers might have greatly annoyed the commerce of the United States, and which, on the other hand, might have been a convenient base of operations for the United States Navy. It was thought right, therefore, by Her Majesty's government to forbid the resort of men-of-war of either of the two parties to the port of Nassau.
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> Governor Rawson, who has been exceedingly strict in compelling the confederate vessels to comply with the rules which he was ordered to enfore, has, no doubt, conceived it to be his duty to require equal compliance with those rules from the United States vessels of war. Her Majesty's government, if the case had been referred to them, might, in all probability, have dispensed with the observance of those rules in the peculiar case of the Honduras; but Her Majesty's government cannot be surprised that an inferior officer should not have conceived himself at liberty, upon his own responsibility, to dispense with rules laid down by Her Majesty for his guidance. I have to observe, moreover, that the landing of the captain of the Honduras and his officers was persisted in not only in contraversion of the express dissent of the governor, and in violation of the rules which the governor had been ordered to cause to be observed, but in contravention, also, of the quarantine laws of the colony. This is a proceeding which Mr. Seward, I conceive, will surely not consider to have been justifiable.

It is, however, alleged generally, in the Case of the United States, that the special permission to anchor in the port of Nassau was "lavishly given to every insurgent cruiser, but was granted churlishly, if at all, to the vessels of the United States." Elsewhere it is said that "an order more unfriendly to the United States" than that of the 31st of January, 1862, "could not have been made. Under the construction practically put upon it, the vessels of war of the United States were excluded from the harbor (of Nassau) for any purpose."[3] It will, perhaps, be a matter of some little surprise to the tribunal to learn that, whereas on two occasions only did vessels visit the port of Nassau as confederate cruisers, there are no less than thirty-four visits of United States ships of war to the Bahama Islands recorded during the time that the [110] regulation *was in force.[1] On four occasions, at least, vessels of the United States exceeded the twenty-four hours' limit, and took in coal by permission; one of them also received permission to repair; several were engaged in pursuit of vessels suspected of being blockade-runners, and did not in every instance relinquish the chase within British limits. Two prizes appear, indeed, to have been captured by them, one within a mile of shore, the other almost in port.[1]

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[1] Appendix to Case of the United States, vol. i, p. 714.

[2] Page 316.

[3] Page 228.

The use made of the waters of the Bahamas by Federal cruisers, for the purpose of watching and intercepting vessels supposed to be freighted with cargoes for confederate ports, was so persistent as to induce the governor on one occasion, when granting permission to coal to the commander of the Dacotah, to accompany it with the condition that the vessel should not, within the next ten days, be cruising within five miles of any of the Bahama Islands.[2] On this subject there is some comment in the Case of the United States. The application was for permission to ship, not twenty tons of coal, as there represented, but sixty; and no limitation of the amount was imposed by the governor, though the captain of the Dacotah chose only to take the smaller quantity, which was sufficient to carry him to the coaling-depot of the United States Navy at Key West. The condition exacted on this occasion by the governor was not countenanced by Her Majesty's government, nor was it required on subsequent occasions, although Earl Russell had, in June, 1864, to complain of the frequent visits of the United States gun-boat Tioga to the out-islands of the Bahamas for the purpose of obtaining supplies, and of the manner in which the commander of that vessel set the regulations at defiance by anchoring in the roadstead of Bimini without permission.[3]

It has been said that only two vessels of war of the Confederate States are known to have visited the harbor of Nassau as such, the Florida and the Retribution; two other vessels, the Nashville and the Tallahassee, which had acted as cruisers, entered the harbor, but they did so after they had ceased to bear that character, as merchant-ships and under other names. Of the visit of the Retribution there is little to be said. She entered the harbor of Nassau as being in distress, in February, 1863, where she was condemned as unseaworthy, dismantled and sold, and registered as a British merchant-ship under the name of the Etta.[4] The Florida was the only other confederate ship of war which received the permission of the governor to anchor in the port of Nassau, which is said in the Case of the United States to have been so "lavishly given" to such vessels.

THE FLORIDA AT NASSAU.

The Florida at Nassau.

The reception of the Florida at Nassau was in no way more favorable than that generally accorded to Federal men-of-war visiting the colony. Indeed, it was rather less so. She came into the harbor of Nassau on the morning of the 26th January, 1863, without previously asking permission, her commander being, as he explained, ignorant of the regulation which rendered such a course necessary. The fort-adjutant, as he had done in the case of the United States vessel Stars and Stripes some months before, came on board to ask for an explanation; and he took the commander of the Florida on shore in his boat, as he had on the former occasion taken the commander of the Stars and Stripes, in order that application might be at once made for the necessary permission. Captain Maffit addressed a letter to the governor, stating that his vessel was in distress for want of coal, and requesting permission to anchor for the purpose of obtaining it. The governor granted the permission, stating that he did so as thereby according to a confederate steamer the same privileges which he had formerly granted to Federal steamers. But he desired that the irregularity in delaying to make the request should be pointed out, and that the pilot should be called on to explain how he admitted the Florida without permission.[1] In the case of the Stars and Stripes, the governor had, without any written application, given leave to take in coal for a much larger amount than her commander required, and the United States consul wrote to thank him for "the permission so graciously accorded."[2]

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[1] See return of visits of United States vessels to British colonies, Appendix to British Case, vol. v, p. 224.

[2] Appendix to British Case, vol. i, p. 79. Appendix to Case of the United States, vol. vi, p. 98.

[3] Appendix to British Case, vol. i, p. 360.

[4] Appendix to British Case, vol. v, pp. 21, 196. The regulation prohibiting the entry of belligerent vessels into British ports for the purpose of being dismantled and sold was only issued in September, 1864, more than a year afterward. (See Appendix to British Case, vol. i, p. 467.)

[111] *The Florida remained in the harbor about twenty-six hours, (not thirty-six, as stated in the Case of the United States,[3]) leaving not later than noon of the 27th of January. Of the exact amount of coal taken on board no record has been found; but it could not have been such an amount as is assumed by the United States. The quantity of coal which the Florida was capable of stowing was but 130 tons;[4] her consumption at full speed was estimated by British officers appointed to investigate the matter at Bermuda, as 15 cwt. an hour, or 18 tons a day. She could not possibly, therefore, have taken on board a three months' supply, as is alleged. This is further proved by the statement, which afterward appears in the Case of the United States, that "by the middle of the following month her coal was getting low;" and this when we are told that "she ordinarily sailed under canvas," and only used steam in the pursuit and capture of vessels.[5]

Her Britannic Majesty's government thinks that enough has been said to show that the partiality alleged to have been shown to confederate vessels of war by the authorities of Nassau had no real existence. The United States have alluded, in their Case, to the absence of any but official relations between those authorities and the United States consul. Her Majesty's government is unwilling to dwell upon the reasons (which were not political) for that state of things. It was, undoubtedly, a source of embarrassment to the governor; and it appears to have created a feeling on Mr. Whiting's part, which colored all his reports to his Government, and render them far from an accurate representation of the real state of affairs in the colony. The following extract from a dispatch of the governor shows that there was no indisposition to show hospitality and civility to officers of the United States when he could properly do so:

> So far from having shown too much sympathy with the South, I believe I might justly be suspected of not having shown enough. I know that I have seen and received more northern than southern visitors at Government House during the last season; and that whereas I had invited several northern officers to dinner, the only southern officer who called I did not invite.

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[1] Appendix to British Case, vol. i, p. 78.

[2] Ibid., vol. v, pp. 31, 32.

[3] Appendix to British Case, vol. i, p. 79. See also extract from Bahama Herald, Appendix to Case of the United States, vol. vi, p. 334.

[4] See report of British naval officers at Bermuda, Appendix to British Case, vol. v, p. 11.

[5] Case of the United States, p. 352.

EXECUTION OF THE RULES OF JANUARY 31, 1862, IN OTHER COLONIES.

Execution of the rules of January 31, 1862, in other colonies.

Having thus shown the conduct of the authorities at Nassau under the special regulations applicable to that colony, Her Britannic Majesty's government proceeds to notice the alleged disregard of the general regulations in the case of visits of confederate cruisers to other British ports. According to those regulations, no vessel of war of either belligerent was to be allowed to remain in a British port more than twenty-four hours, except in case of stress of weather, or of her requiring repairs or supplies necessary for the subsistence of her crew. No coal was to be supplied to such a vessel beyond the amount sufficient to carry her to the nearest port of her own country; nor was coal to be again supplied to her in any British port, without special permission, within three months after she had last received such a supply in a British port. It has been already explained that the case of the Nashville, at Bermuda, in February, 1862, did not come within these rules, which had not at the time reached the colony. The first, and, indeed, the only, instance in which special permission to coal was obtained within three months after a previous supply at a British port was that of the Florida, at Barbados.

THE FLORIDA AT BARBADOS.

The Florida at Barbados.

The Florida arrived at Barbados on the 24th February, 1863. Her commander represented to the governor that his vessel had recently gone through severe weather; that his stock of coal had, in consequence, been entirely exhausted; and that, unless he could ship some more, and have some lumber to repair the damages his vessel had suffered, he could not go to sea, and would be obliged to land his men and strip the ship. The governor granted the permission, limiting the amount to ninety tons, which was certainly not an excessive quantity, considering the distance from the ports of the Southern States.[1] In so doing, he was under the impression that he was only granting similar facilities to those previously accorded to the United States vessel San Jacinto, whose commander had also asked for special permission to ship fuel and articles for repairs. The governor took the [112] *further precaution of writing to the governors of neighboring British colonies, stating the date at which the Florida had coaled. All this he explained to Admiral Wilkes, who visited the island shortly afterward, and who, after receiving these explanations, made use of them to write him a long letter of complaint. The matter was reported by the governor to Her Britannic Majesty's government, and was also represented by Mr. Seward to Lord Lyons. While acquitting the governor of any intentional disregard of his instructions, the government were of opinion that, in regard both to the San Jacinto and the Florida, too much latitude had been used in giving the "special permission" contemplated in the regulations, and a dispatch was addressed to Barbados, and to other British colonies in the West Indies, defining the circumstances under which such "special permission" might properly be granted. It was pointed out at the same time that an unauthorized concession to one belligerent was not likely to be accepted, by those to whom it was made, as a justification of a similar concession in the opposite direction.[2]

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[1] Appendix to British Case, vol. i, p. 92.
[2] Ibid., vol. i, p. 102.

It is now asserted by the Government of the United States that the case of the San Jacinto, referred to by the governor of Barbados, was not parallel to that of the Florida, inasmuch as the San Jacinto, though she had touched at Bermuda shortly before her arrival at Barbados, had not taken in any coal at the former colony.[1] Her Majesty's government does not dispute this fact, although not aware of it before. But such a circumstance, recently acertained, as it appears, from the records of the United States Navy, does not in any way affect the fact that the governor was, at the time, under the impression that the two cases were similar. It cannot be admitted, as urged by the United States, that the burden is upon Great Britain to establish that a high officer of Her Majesty acted "innocently" on this occasion, or that his explanation was a truthful one. These are matters which clearly ought to be taken for granted, unless there is positive evidence to the contrary, and the more so when, as on the present occasion, every attendant circumstance combines to show that the officer acted in good faith. Still less can it be allowed that "the act, whether done innocently or designedly, was a violation of the duties of a neutral," or that it furnished the United States with any real "cause of complaint against Great Britain." At most, it amounted to no more than a somewhat too broad interpretation placed by the authorities of a distant colony on a rule which had been made, not in compliance with any requirement of international law, but as a matter of convenience; and measures were at once taken to prevent the recurrence of a similar mistake.

The instructions sent to the governor on this occasion enjoined on him a strict adherence to the regulations, "without any arbitrary concession to either belligerent," as the best means of avoiding misunderstanding and complaints of partiality for the future. The anxiety of the governor to comply with this direction led to a misunderstanding, of which mention has been made in the Case of the United States. The United States vessel of war Connecticut touched at Barbados in April, 1865, and her commander, Captain Boggs, wrote to the governor: "I find it necessary to remain a few days for the purpose of overhauling the piston and feed-pump of the engine, and I trust that no objections can be made." It will be seen that the application was rather loosely worded as regards the necessity of the repair. The governor, in consequence, replied that Captain Boggs knew, of course, the instructions under which they both acted, and that, before giving his sanction, he must request a definite assurance of the inability of the Connecticut to proceed to sea at the expiration of twenty-four hours, and as to the period within which it would be possible to execute the necessary repairs. This was, in fact, no more than a request for a formal application from the commander of the Connecticut such as would bring that vessel within the letter of the regulations. Captain Boggs, however, somewhat unreasonably interpreted it otherwise. He replied that it virtually refused the permission requested, and that "he could not give such an assurance as was required, inasmuch as an American ship of war could always go to sea in some manner." He left the port, accordingly, without repairing. The governor reported the matter home at the time, saying that he thought Captain Boggs had placed an ungenerous construction on his letter, but that he did not see how he could have acted otherwise; and, in a dispatch lately received, he repeats the same explanation. "The commodore," he says, "knew perfectly well what my instructions were; and if my words had any meaning at all, it must have been clear to him that I wanted nothing more from him than a justification for acceding to his request.[1]

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[1] Case of the United States, p. 356. Appendix to same, vol. vi, p. 345.

[113] *The arbitrators will have observed that, in cases where confederate vessels of war applied for permission to repair, it was frequently the practice of the British authorities not to depend upon the mere statement of the commander of the vessel as to the necessity for repairs and the time they would take, but to insist on an examination and a report by British officers; and this requirement was, as far as is known, acceded to in all such cases without demur. No instance is alleged of such a precaution having been taken in the case of United States vessels; and, compared with it, the answer given to Captain Boggs cannot be regarded as matter for complaint. Her Britannic Majesty's government have only to add that, in addition to the visits of the San Jacinto and Connecticut alluded to above, nineteen other visits of United States ships of war to Barbados are recorded during the civil war. Two of these vessels are mentioned as having received permission to take in coal, and none of them appear to have had any reason to complain of their reception. As far as Her Majesty's government is aware, the visit of the Florida is the sole instance of any confederate cruiser having received the hospitality of the colony.

THE FLORIDA AT BERMUDA.

The Florida at Bermuda.

The Florida arrived off Bermuda for the first time on the evening of the 15th of July, 1863, and entered the harbor the following morning. Her commander stated that his vessel was in want of repairs to the hull and machinery, and that he required also a small supply of coal. Of the latter, there was at the time none in the colony except in the government stores, and the military and naval authorities, to whom Captain Maffit successively applied, positively refused to allow him any supply from that source.[2] Permission to effect repairs in the government dock-yard was also refused; and Captain Maffit, having stated that his vessel must be considered as detained in distress for want of coal, was warned that the regulations were very strict as to the limitation of time for the stay of belligerent cruisers; that it was necessary that whatever the Florida required to enable her to leave should be provided within the shortest possible period; and that, in the meanwhile, she must leave the port of St. George's for the anchorage at Grassy Bay. The arrival of a vessel from Halifax with a cargo of coal relieved Captain Maffit from his difficulty, and he left the island on the 25th of July. The vessel which brought the coal is asserted by the United States to have been the Harriet Pinckney, and it is insinuated that the transaction amounted to an infraction of the rule against the establishment of coal-depots in British ports for the use of either belligerent. Her Majesty's government is at a loss to understand on what ground such an allegation is made. The Harriet Pickney was, to all appearance, an ordinary trading-vessel, in which capacity she visited Saint George's five times between January, 1863, and February, 1864.[3] There was nothing in the attendant circumstances to raise a suspicion that the coal was sent expressly for the Florida; indeed, the previous conduct of Captain Maffit contradicts such a supposition; nor does the occurrence seem to have given rise to any complaint on the part of the United States consul.

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[1] Appendix to British Case, vol. v, p. 1.

[2] Ibid., vol. i, pp. 108, 109.

[3] Ibid., vol. v, pp. 5, 13.

On this occasion, through a misconception, the salute of the Florida was returned. It was the only instance in which the flag of the Confederate States received such a courtesy from British authorities. It was disapproved by Her Majesty's government; and a circular instruction was sent to all the British colonies to prevent its repetition.[1]

From Bermuda the Florida proceeded to the French harbor of Brest, where she remained five months refitting. On the 26th April, 1864, she visited the French port of Saint Pierre, Martinique, where she remained till the 7th May and took in a full supply of coals, provisions, and water.[2] On the 14th May she again appeared off Bermuda, but remained only long enough to land a sick officer. She returned to Bermuda on the 19th of June, 1864, and her commander, Lieutenant Morris, wrote to announce his arrival, stating that he was in want of coals, provisions, and repairs, which last it would be impossible to effect unless he were authorized to proceed to the government dock-yard. Permission to do this was, however, refused. Two British officers were sent on board the Florida with directions to report whether she could proceed to sea without any repairs being made to her machinery, and what time they considered would be necessary to complete such repairs as might be absolutely required, and were capable of being carried out in [114] Saint George's harbor. *These officers reported, on the 20th of June, that the Florida could "proceed to sea with safety under steam, but under sail was unmanageable with her screw up in bad weather," and they stated that the necessary repairs could be made good there, and, as far as they could judge, would require five days for one man, viz, a diver for two days, and a fitter for three days, or three complete days in all. There were also defects which rendered her maintopmast unsafe, and which could, in their opinion, be made good in two days; they did not state how many men would be required.

The governor, after consulting with the admiral on the station, gave permission on Monday the 21st of June for the Florida to remain five days in port, a permission which cannot be considered unreasonable, considering the scarcity of skilled workmen and the possibility evidently contemplated by the committee of officers that it might be necessary to employ the same man as fitter and diver. The five working days expired at noon on Monday the 27th June, and on the evening of that day the Florida left the port. Among the documents produced by the United States is a bill for carpenter's work sent in to the commander of the Florida, which shows that four carpenters were employed on her for four days. Taking into account the small quantity of materials charged for, which show that the repairs could not have been extensive, the probability that unskilled workmen were employed, and the fact previously mentioned, that the number of men required to repair the maintopmast is not stated in the report of the officers, Her Majesty's government does not see that any proof is produced of an abuse of the permission given. The report of the officers went on to state the hourly consumption of coal of the Florida's engines, and they estimated that she could reach the port of Mobile with a supply of 100 tons. The governor received a written assurance from Lieutenant Morris that the first confederate port he expected to make was Mobile, and that he had taken on board about 80 tons of coal, more or less. The United States produce what purports to be a voucher for 135 tons of coal supplied to the Florida on this occasion. If this voucher is correct, Her Majesty's government can only say that not only did Lieutenant Morris deceive the governor, but that the Florida took on board more coal than, according to the estimate of the British officers, she had room to carry. The simple fact is, that the governor, who had recourse to the advice of the admiral on the station, conscientiously endeavored to enforce the regulations.[1]

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[1] Appendix to British Case, vol. i, p. 108; vol. v, p. 129.
[2] Ibid., vol. i, p. 131.

The Florida left Bermuda, as has been said, on the 27th of June. Five days afterward she re-appeared, for the alleged purpose of giving up two British soldiers, deserters, who had been found on board, and an endeavor was made by her commander to obtain more coal to replenish the amount he had consumed, said to be 15 tons. This was peremptorily refused, and the barge containing the coals was brought back, though not, it is believed, until Lieutenant Morris, who had begun coaling without permission, had succeeded in shipping about 7½ tons. The Florida then left, and did not again visit a British port.[1]

THE CHICKAMAUGA AT BERMUDA.

The Chickamauga at Bermuda.

The other confederate cruiser, whose treatment at Bermuda forms a subject of complaint on the part of the United States, is the Chickamauga. Of this vessel it is said that "on the 8th of November she was allowed to come into the harbor, and permission was given for a stay of five days for repairs, and also to take on board 25 tons of coal, though she had at that time 100 tons in her bunkers;" that "she actually staid seven days and took on board 82 tons."[2] The authority given for this is an extract from a manuscript diary of a midshipman on board the vessel; but the quotation is incorrect, for the amount stated in the diary is not 82 but 72 tons.[3] Her Majesty's government may remark that the evidence derived from a midshipman's journal can hardly be regarded as of much value. It has been seen elsewhere that the passages in the published journal of an officer of the Shenandoah, quoted or referred to by the United States, were inaccurate in matters relating to that vessel, of which he had no absolute personal knowledge, and this seems to be the case in the present instance.

The Chickamauga arrived at Bermuda on Monday, the 7th November, 1864, and her commander asked permission to coal and repair machinery. Two officers of the British navy were sent on board to report what repairs were required, the quantity of coal in the vessel, and the additional quantity, if any, which would be required to enable her [115] to *reach the nearest port of the Confederate States. These officers reported on Wednesday, the 9th of November, that the repairs necessary to render the vessel fit for sea would take four or five days to complete; that she had about 75 tons on board; that her daily consumption was 25 tons, and that they considered 25 tons more would enable her to reach the nearest confederate port.[4] Permission was, therefore, given to her commander to take the vessel in St. George's Harbor, to remain there till Tuesday, the 15th instant, (that is to say, for a space of about five working days,) and to take on board 25 tons of coal. The commander objected that the quantity of coal allowed was insufficient, and asked for permission to take in 25 tons more, but this was refused.[5] Orders were given to the revenue officer in charge to take care that the specified amount was not exceeded, and the tribunal will find in the appendix the affidavit of the officer placed on board for this purpose on the night when the Chickamauga was coaling, in which it is positively affirmed that she did not receive more than 25 tons on that occasion, and a conviction is expressed that she did not get more at Bermuda.[1] Other concurrent testimony is also given; but it appears that the harbor was at the time crowded with shipping, and at this distance of time it is not possible absolutely to prove that by some illicit means the Chickamauga may not have succeeded in obtaining an extra supply. Her Majesty's government maintains, however, that on this occasion, (as was observed by Earl Russell with regard to the previous visit of the Florida,) "although some disposition was manifested to evade the stringency of Her Majesty's regulations, the most commendable strictness and diligence in enforcing those regulations was observed on the part of the authorities."[2]

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[1] Appendix to British Case, vol. i, p. 133; vol. v, pp. 4, 9–12.
[2] Case of United States, p. 415.
[3] Appendix to Case of United States, vol. vi, p. 726.
[4] Appendix to British Case, vol. v, pp. 135, 136.
[5] Ibid., pp. 137, 138.

Having thus noticed the visits of confederate cruisers to Bermuda, it is necessary to make some mention of the acts and the treatment of United States vessels of war at that colony. Admiral Wilkes arrived off the island on the evening of the 26th September, 1862, on board the Wachusett, accompanied by the gun-boats Sonoma and Tioga. The Wachusett and Tioga entered the harbor on the morning of Saturday the 27th, and requested permission to take on board about sixty tons of coal. Upon various pretexts the departure of these vessels was delayed until the 1st of October, when the Tioga left. An accident to the boiler of the Wachusett deferred her departure to the next day. The Sonoma, in the meanwhile, continued to cruise in the offing by day, and in the evening anchored close to the narrow entrance of the harbor, and this proceeding was persisted in, notwithstanding the governor's remonstrances. Admiral Wilkes requested permission for the Sonoma to come into the harbor, for thirty-six hours, to repair; and this was granted. The Sonoma accordingly entered on the 1st of October, and proceeded to take in coal. It had not been understood that permission for that purpose was requested; the squadron, moreover, had left the United States but four days before their arrival at Bermuda, and the Sonoma's supply of coal had been since expended in cruising off the harbor; yet she was allowed to renew her supply. The Tioga, in the meanwhile, took up the same position which the Sonoma had previously occupied outside the harbor, and these two vessels remained cruising off the port of St. George's until the 12th of October. Contrary to the ordinary courtesy on such occasions, the commander of the Sonoma placed sentries on British territory on the wharf from which she was taking coals. The British minister at Washington was instructed to address a remonstrance to the Government of the United States upon the subject of Admiral Wilkes's proceedings. Mr. Seward replied, stating that Admiral Wilkes's conduct must have been misunderstood; that his reports gave abundant evidence of feelings altogether just and liberal toward the British authorities, and respectful and cordial toward the British government. He promised, however, an investigation into the circumstances, and he subsequently communicated to Lord Lyons, with the expression of a hope that it would prove satisfactory, a dispatch from Admiral Wilkes denying that he had given any cause of complaint. The amount of coal taken in by Admiral Wilkes's squadron amounted to 239 tons.

An allusion is made in a foot-note at page 324 of the Case of the United States to the failure of the United States vessels Keystone

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[1] Appendix to British Case, vol. v, p. 139.

[2] Appendix to Case of the United States, vol. vi, p. 368.

State and Quaker City to obtain coal at Bermuda in December, 1861. At that time there was no restriction on the coaling of belligerent vessels. All that happened was, that the British admiral declined to supply the two vessels mentioned from the government stores, not having a sufficient stock for his own vessels. A similar answer had, [116] in the foregoing October, been returned to the *commander of the Nashville, who had supplied himself from private sources, but this, on account either of the scarcity or the high price of coal in the colony, the United States officers did not do. Twelve other visits of United States vessels of war to Bermuda are recorded. Five of these vessels exceeded the twenty-four hours' limit of stay; three are stated to have refitted, two to have coaled. Among these was the Wachusett, which returned to the colony in May, 1853, and obtained permission to coal and repair.[1] In the case of another vessel, the Mohican, which put in on her way from Philadelphia to the west coast of Africa, the governor not only granted an exceptionally large supply of coal, beyond the quantity authorized by the regulations, but promised the assistance of the government dock-yard official towards the completion of her repairs, and his conduct in so doing was approved by Her Majesty's government.[2]

United States vessels at Bermuda.

The quantity of coal taken by the Mohican seems slightly to have exceeded the amount named by her commander. He asked for permission to ship 100 tons, but is stated to have received 104. The difference is not material except to show that the most conscientious officer may chance to take a little more than the amount at which he has roughly estimated his requirements.

Her Majesty's government thinks that enough has been said to convince the tribunal that, as regards the colony of Bermuda, no accusation of undue partiality toward the Confederate States can be fairly made.

THE ALABAMA AT JAMAICA.

Of the visit of the Alabama to Jamaica there is little to be said. She arrived on the 20th of January, 1863, having recently engaged and sunk the United States ship of war Hatteras. Her need of repairs was obvious, as she had six shot-holes in her hull at the water-line. She was received as a vessel of war, as she had previously been at the French colony of Martinique, and she obtained permission to make repairs and take in coal. The repairs were completed on the 25th of January, on the evening of which day she went to sea. Seven vessels of the United States are recorded to have visited Jamaica during the civil war, remaining for periods of from three to ten days. Three of them received coal; the quantity supplied is unknown.[3]

The Alabama at Jamaica.

THE ALABAMA, GEORGIA, AND TUSCALOOSA AT THE CAPE OF GOOD HOPE.

Concerning the visits of the Alabama, the Georgia, and the Tuscaloosa to the Cape of Good Hope in August and September, 1863, every material particular has been placed before the arbitrators in the Case of Great Britain, nor is there anything on the subject in the Case of the United States which seems to call for a further reply than will be found in the statement of facts thus given. The grounds have been stated on which it was considered by Her Majesty's

The Alabama, Georgia, and Tuscaloosa.

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[1] Appendix to British Case, vol. v, p. 226.

[2] Ibid., p. 32.

[3] Ibid., p. 231.

government that the governor and his legal advisers had been in error in determining that the Tuscaloosa must be regarded as a duly commissioned ship of war. An account has also been given of the seizure of that vessel, and of the orders which were given by the government for her release, on the special ground that, the vessel having been once allowed to enter and leave the port as a recognized ship of war, and no warning having been given to the officer in charge of her of any change of intention on the part of the authorities, he was fairly entitled to assume that she would be again received in the same character. The Tuscaloosa did not, however, return into the hands of the confederate government, but was eventually handed over at the end of the war to the United States consul at Cape Town.[1]

Of the amount of coal supplied to the Georgia at the Cape of Good Hope there is no record. It would seem that 180 tons were forwarded to Simon's Bay for the use of the Alabama on the 19th September, 1863. The Alabama proceeded to the Indian Ocean, and took in a fresh supply (250 tons) at Singapore on the 23d December. She returned to the Cape of Good Hope on the 20th March, 1864, and it is stated in the Case of the United States that, on the 21st, she began taking on board fresh supplies of coal. The interval between the two supplies is thus made out to be two days less than three calendar months, and this is adduced as a "fresh violation of the duties of Great Britain as a *neutral."[2]

[117] The authority given is a book entitled "My Adventures Afloat," published by Captain Semmes, the commander of the Alabama. One of the passages referred to is as follows, (p. 744:)

> We entered Table Bay on the 20th of March, and on the next day (*i. e.*, the 21st) we had the usual equinoctial gale. * * * The gale having moderated the next day, (*i. e.*, the 22d,) lighters came alongside, and we began coaling.

The Alabama at the Cape of Good Hope.

The Alabama did not, therefore, begin coaling at Table Bay on the 21st, but on the 22d of March, 1864.

Again, on referring to another book published by Captain Semmes, "The Cruise of the Alabama and Sumter," the following passage is found relative to the visit of the Alabama at Singapore, (p. 234:)

> *Tuesday, December* 22.—At 9.30 a. m. the pilot came on board, and we ran up to the New Harbor alongside of the coaling-depot and commenced coaling.

And on referring to the passage of the "Adventures Afloat," on the same subject, it will be found stated that the "coaling lasted ten hours."[3]

It is proved, therefore, from the very authority quoted by the United States, that the Alabama had taken in her last supply of coal not on the 23d but on the 22d of December, 1863, and that the specified period of three months had exactly elapsed before she began taking in a fresh supply. But if the dates had really been as alleged, the circumstance would have proved nothing against the colonial authorities, still less against Great Britain. The captain of the Alabama applied for permission to coal on the ground that he had last coaled at Singapore on or about the 21st of December. The governor and admiral could have had no means of checking the date to a single day, and the permission was granted on the faith of Captain Semmes's statement. That statement was in every way consistent with probability, and with the facts as far as they were or could be known at Cape Town. It would surely be nothing less than ridiculous that an asserted "violation of the duties of Great Britain as a neutral" should be found to depend on a doubtful mistake of a single day, on the difference between lunar or calendar months, or on the fact that a particular February fell in leap year.

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[1] British Case, p. 115.

[2] Case of the United States, pp. 316, 386.

[3] Page 715.

There are records, on the other hand, of eleven visits of United States men-of-war to the Cape of Good Hope, three of which received coal; but Her Majesty's government will only call the attention of the tribunal to one of these, the Vanderbilt. This vessel obtained at the British colony of St. Helena on the 18th of August, 1863, 400 tons of coal. She arrived at Simon's Bay, Cape of Good Hope, on the 3d of September, rather more than a fortnight afterward, and remained until the 11th, taking on board 1,000 tons of coal. She visited the British colony of Mauritius a fortnight later, on the 24th of the same month, and there remained till the 10th of October, shipping a fresh supply of 618 tons. On the 22d of that month, only twelve days after her departure from Mauritius, she re-appeared at Cape Town, and her commander applied for permission to remain five or six working days, for the purpose of making necessary repairs, and also to get a supply of fuel. The governor, as the captain reports, "took a day to decide," and then replied, granting the permission for the Vanderbilt to remain in harbor, but stating that he did not think his instructions would admit of his giving permission to her to coal, especially as it was notorious that the three supplies so recently received had been expended in cruising.[1] She thus committed in six weeks two apparently deliberate breaches of the regulations, and attempted a third. The case of the Vanderbilt does not certainly show any hostile rigor on the part of the authorities at the British colonies which that vessel visited.

RECAPITULATION.

Recapitulation.

Her Majesty's government has now, it is believed, examined all the instances brought forward in the Case of the United States to support the charge of "excessive hospitalities" on the part of British authorities to confederate cruisers and of "discourtesies to vessels of war of the United States." The examination has shown how groundless is that charge, and with how little reason it can be said that the rules laid down as to the treatment of belligerent vessels "were often utterly disregarded" in the case of confederate ships of [118] war, and *"rigidly enforced against the United States." A few words only require to complete the comparison. During the course of the civil-war ten confederate cruisers visited British ports. The total number of such visits was twenty-five, eleven of which were made for the purpose of effecting repairs. Coal was taken in at sixteen of these visits, and on sixteen occasions the limit of stay fixed by the regulations was exceeded. In one of these cases, however, the excess was no more than two hours, and in another, the delay was enforced in order to allow twenty-four hours to elapse between the departure of a United States merchant-vessel and that of the confederate cruiser. On the other hand, the returns which have been procured of visits of United States vessels of war to ports of Great Britain and the colonies, though necessarily imperfect, show an aggregate total of 228 such visits. On thirteen of these, repairs were effected; on forty-five occasions supplies of coal were obtained; and the twenty-four hours' limit of stay was forty-four times exceeded. The total amount of coal obtained by confederate cruisers in British ports during the whole course of the civil war, though it cannot be ascertained with accuracy, may be estimated to have amounted to about 2,800 tons. The aggregate amount similarly supplied to vessels of the United States cannot be estimated, from the want of data as to the supplies in many cases, but those cases only in which the quantities are recorded show a total of over 5,000 tons; and this notwithstanding the United States Navy had free access to their own coaling-depots, often close at hand. In one case noticed above, a vessel of war of the United States, the Vanderbilt, alone received 2,000 tons of coal at different British ports within the space of less than two months, being more than two-thirds of the whole amount obtained from first to last by confederate vessels.

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[1] Appendix to Case of the United States, vol. vi, pp. 145, 146.

It has been seen that of the three instances in which the United States assert that confederate vessels were allowed to coal in contravention of the rules of January 31, 1862, one alone, the coaling of the Florida at Barbados, can in any way be considered a departure from those rules, and that only in a limited sense.

Other instances of infractions of the rules by United States vessels are known to have occurred besides that of the Vanderbilt. The case of the Tuscarora has already been alluded to. The Kearsarge, after receiving 91 tons or coal at Dover, on the 2d of August, 1864, coaled again at Barbados, on the 23d of October. The Sacramento took in 87½ tons at Cork between the 28th July and the 1st August, in that year. She obtained 25 tons more at Plymouth, on the 16th of August, and 30 tons more were sent out to her from Dover by the United States consul, in a vessel which left without clearance for the purpose, on the 23d of the same month. It was not thought necessary to take any notice of this occurrence at the time, but a regulation was afterward made to prevent such a practice being resorted to in the future for the purpose of evading the regulations. The United States vessel Wyoming made use of the port of Hong-Kong in a similar manner, anchoring just outside of British waters, and obtaining coal and supplies in boats. This she did in February, 1863, and again in February, 1864. On the second occasion she is believed to have anchored within the British limits. She obtained 165 tons of coal, having been supplied in the previous December with 120 tons at the British colony at Labuan; and this, although there was a depot for the United States at Macao. The Narraganset again is recorded to have coaled twice within three months at Esquimaux Point, in British Columbia—once on the 23d of November, 1863, the second time in January, 1864.[1]

Her Majesty's government wishes to be understood as quoting these instances not in recrimination but in self-defense. There may not improbably have been, in some of these cases, reasons to excuse a departure from the strict letter of the regulations. All that is sought to prove is that those regulations were not enforced against the vessels of the United States in any invidious manner; that the officers of the United States Navy were treated with courtesy and leniency, even when, on some occasions, their conduct did not show any very scrupulous respect for the conditions on which the hospitality of British ports was extended to them; and that the facts by which the United States seek to prove a lax observance, to their disadvantage, of the duties of neutrality, might with more justice be invoked in support of a directly opposite conclusion.

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[1] See Return of visits of United States vessels to British ports. Appendix to British Case, vol. v, pp. 228, 233, 234.

Her Majesty's government will ask the tribunal to suppose the case reversed—that the vessels of the Confederate States had been allowed the indulgences which were shown to those of the United States, and that United States vessels had been subjected to precautions such as were often enforced against confederate cruisers. A moment's reflection will show that, if complaints and claims are to be made on such grounds, the United States would have had much more reason to make them on such a supposition than they have under the circumstances as they really stand.

[119] *Her Majesty's government regrets to have been compelled to lay before the tribunal in this section a number of details which have so slight a bearing on the questions referred to it, and many of which are so trivial in themselves. But it was due to the arbitrators, as well as to the United States, that this long series of accusations should not be left unanswered.

COURSE PURSUED BY OTHER COUNTRIES.

Course pursued by other countries.

Before quitting this subject, it may be well to notice briefly the course which was pursued under similar circumstances by other governments, whose conduct the United States have placed in contrast with that of Great Britain, and against whom they declare that they have no serious cause of complaint.[1]

Holland.

1. To instance, in the first place, the conduct of the Netherlands. The Sumter twice visited the ports of Dutch possessions in the East Indies within the space of six weeks; that of Saint Anne's, Curaçoa, on the 13th July, 1861; that of Paramaribo on the 19th August. On the first occasion she remained eight days in port; on the second, eleven days. In both instances she took in more than 100 tons of coal. At the British port of Trinidad the Sumter remained only six days and took in only 80 tons of coal. The United States Government addressed, as Mr. Seward said, "very serious remonstrances" to the Netherlands government on the subject.[2] The essence of those remonstrances was, that the Sumter was not merely a privateer, but a pirate. The Netherlands government, on the other hand, maintained that she was a ship of war. It decided, however, to issue orders that no armed vessel of either belligerent should be allowed to remain more than forty-eight hours in Dutch ports, or to take in more coal than would be sufficient for twenty-four hours' consumption. Although the United States Government was expressly warned that this restriction must apply to vessels of their Navy, as well as to those of their opponents, the regulation was accepted as satisfactory, until applied to a United States ship, the Iroquois, which touched at Curaçoa in November, 1861. On learning the restrictions placed upon his visit, the commander of the Iroquois declined to enter the port upon such terms, and in this decision he was sustained by his Government, who called for a repeal of the obnoxious regulation. The Netherlands government, it appears, had already revoked the regulation, at the instance of the governor of Curaçoa, and they explained that no restrictions would in future be placed on the stay or supplies of American men-of-war in Dutch ports.[3] The United States Government, however, were not satisfied. In February, 1862, Mr. Seward again directed the United States minister at The Hague to call attention to the "subject of the intrusion of piratical

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[1] Case of the United States, p. 462.

[2] Ibid., p. 463.

[3] Appendix to British Case, vol. vi, pp. 91, 94.

American vessels seeking shelter in the ports of the Netherlands and their colonies."

> If [he said] you cannot obtain a decree excluding them altogether, it is thought that the government will have no hesitation in restoring the restrictive policy which was adopted by it under the representation of its foreign affairs by Baron Van Zuylen.[1]

The Netherlands minister for foreign affairs replied, in a long and able note, in which he once more justified the attitude of his country, and declined to return to the former policy of restriction.

> In this regard [he wrote] I permit myself to observe to you, that I could not understand how your government could desire the re-establishment of measures which actually were, and would again, be applicable to both parties, and which were at the time the cause why the Union ship Iroquois would not enter the port of Curaçoa under the rule of the said restrictive measures. * * If the instructions given before the month of December, 1861, were now returned to, the government of the Netherlands might not only be taxed, with good reason, with trifling, but would hurt its own interests, as well as those of the Union, considering that the consequence of the said instructions would be, as has been remarked in the communication of Baron de Zuylen, dated October 29, 1861, that the vessels of war of the United States, also, could no longer be able to sojourn in the Netherland West Indian ports more than twice twenty-four hours, nor supply themselves with coal for a run of more than twenty-four hours.[2]

It is difficult to understand on what ground Great Britain is to be held liable for the acts of the Sumter, while the course pursued by Holland is considered to give the United States no serious cause of complaint. On looking for the reasons assigned, they are found to be as follows:

> [120] *The government of the Netherlands forbade privateers to enter its ports, and warned the inhabitants of the Netherlands and the King's subjects abroad not to accept letters of marque. The United States have no knowledge that these orders were disobeyed.[3]

Her Majesty's government are not aware that, among the numerous charges brought against Great Britain in the Case of the United States, it is anywhere alleged that a privateer of either party entered a British port, or that any British subject accepted a letter of marque during the war. It is indeed true that in official correspondence and in other documents and speeches during the war, it was the common practice of the Government and the citizens of the United States to apply to the confederate cruisers the denomination of "privateers" as well as that of "pirates;" but it is certain that none of these cruisers were privateers in the legal and only proper sense of that term.

Brazil.

2. Let us now turn to the course adopted by Brazil. The Sumter, after leaving Paramaribo, touched at the port of San Juan de Maranham, where she remained ten days, and took in 100 tons of coal. The United States consul at that port addressed a protest to the governor, but the latter replied that the Sumter must be regarded as a belligerent vessel, and as such allowed to supply herself with coal. A long correspondence followed between the Brazilian government and the United States minister, who denounced the conduct of the president of the province of Maranham as "an unfriendly act toward the United States, and a gross breach of neutrality,"[4] but the Brazilian government maintained that their officer had been right, that the Confederate States must be regarded as belligerents, and the Sumter as a ship of war. When, in June, 1862, after more than seven months' discussion, the Marquis d'Abrantes, who had recently become Brazilian minister for foreign affairs, wrote to terminate the controversy,

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[1] Appendix to British Case, vol. vi, p. 95.
[2] Ibid., p. 29.
[3] Case of the United States, p. 463.
[4] Appendix to British Case, vol. vi, p. 67.

and observed that nothing had resulted to alter the relations of friendship and good understanding between the two countries, the United States minister at once replied in a note, of which he stated the sole object to be, "to point out that, so far from nothing having occurred to disturb the good feeling upon which are based the friendly relations between the United States and Brazil, the whole course of your predecessor in relation to the visits of the pirate Sumter to Maranham, and the present attitude of Brazil toward the piratical vessels belonging to the rebel States and to our own national vessels, is considered by the Government of Washington untenable, unjust, and intolerable." In a dispatch which had already been communicated to the Brazilian government, Mr. Seward had urged that further restrictions should be placed on the stay of confederate cruisers in Brazilian ports. The passage to this effect, which the United States minister again brought to the notice of the Brazilian government, was as follows:

> In the mean time it is proper to remark that every maritime power which has recognized the insurgents as a belligerent, except Brazil, has, on the other hand, adopted stringent means to prevent the entrance of piratical vessels into their harbors, except in distress, and has forbidden them remaining there more than twenty-four hours, or receiving supplies which would enable them to renew depredations upon our commerce.
>
> The United States do not say that such measures on the part of Brazil would be satisfactory, nor can they consent to ask Brazil for less than the absolute exclusion of pirates from her harbors. Yet such measures, if adopted, would bring Brazil upon the same ground in relation to the United States which is occupied by other maritime powers, and thus would mitigate the discontent which you are authorized to express.[1]

With this request the government of Brazil did not think fit to comply. The regulations issued by it in August, 1861, did not restrict the stay of belligerent vessels in Brazilian ports, unless they came in with prizes. The regulations also permitted the taking in of victuals and naval provisions, indispensable for the continuation of the voyage, without placing any specific limit on such provisions, or fixing any period within which a fresh supply should not be granted. The Brazilian minister for foreign affairs called the attention of the United States minister to the principles of neutrality laid down in these regulations as "being perfectly identical with those which are adopted and followed by other maritime powers."[2]

In April and May, 1863, the Florida, Georgia, and Alabama visited different ports of Brazil, and remained there for some time coaling and repairing. The Alabama, having made captures within the territorial waters of Brazil, in the neighborhood of the island of Fernando de Noronha, was ordered by the president of Pernambuco, on the 27th of April, to put to sea within twenty-four hours, and left accordingly. [121] She re-appeared, however, in *the harbor of Bahia on the 11th of May, and remained there fourteen days. These proceedings gave rise to further remonstrances on the part of the United States minister, who protested against any of the three vessels being admitted into Brazilian ports, and maintained that the Alabama should have been seized and detained at Bahia. The Brazilian government replied that the course pursued toward these vessels had been right; that they must be received on the same terms as cruisers of the United States; and that the president of Bahia could not do otherwise than receive the Alabama in that port in the absence of positive evidence of her having infringed the neutrality of Brazil. This, it was stated, was not forthcoming at the time, the investigation of the subject being still in progress.

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[1] Appendix to British Case, vol. vi, p. 40.

[2] Ibid., p. 42.

Instructions were, however, issued by the government of Brazil, in June, 1863, defining the construction to be placed on the regulations of August, 1861, and the precautions to be taken for their observance. With regard to the limitation of supplies to such as were necessary for the continuation of the voyage, it was stated that this provision presupposed that the vessel was bound for some port. Such presupposition would not hold good if the same vessel should seek to enter a port repeatedly, or if, after having procured supplies in one port, she should enter another immediately afterward under the same pretext, except in the case of overruling necessity. Any vessel committing a violation of neutrality was to be at once compelled to leave the waters of Brazil; and the Alabama, having been guilty of acts of this nature, was not again to be received in any port of the empire.

The Florida, against which no such breach of neutrality had been charged, returned to Brazil in August, 1864, and at Bahia was again received as a vessel of war.

It will be seen, then, that the principles on which the regulations of the Brazilian government were framed were the same in substance as those applied by Great Britain. It was considered that confederate vessels must be received on the same footing as those of the United States; that they must be allowed the supplies necessary for the voyage on which they were engaged; that the seizure or detention of such a vessel would be a breach of neutrality; and that, to justify even her dismissal from a Brazilian port, evidence of a violation of Brazilian neutrality committed by her as a belligerent vessel must first be obtained.

On these conditions the Sumter, Florida, Georgia, and Alabama, were admitted to Brazilian ports. The last-named vessel having captured and burnt prizes within the waters of Brazil, instructions were issued to exclude her for the future. A similar prohibition was issued against the Shenandoah, not from any doubt as to her *status* as a ship of war, but on the ground that her commander had violated the seal of the Brazilian consulate. In neither case, however, did any occasion occur for enforcing the prohibition, as the Alabama did not return to the coast of Brazil after she left Bahia, nor did the Shenandoah ever visit a Brazilian port.

3. "The Russian government," it is said by the United States, "ordered that even the flag of men-of-war belonging to the seceded States must not be saluted."[1] Russia.

Her Majesty's government itself issued similar orders addressed to all governors of British colonies.[2] These orders were as follows:

[Circular.]

DOWNING STREET, *January* 11, 1864.

SIR: Her Majesty's government have had occasion to consider whether salutes can properly be exchanged between the forts in Her Majesty's colonies and vessels of war of the Confederate States.

I have to instruct you that, in case the commander of any such vessel should offer you a salute, it will be your duty to decline it; and that if the salute should be fired without having been previously offered, it should not be returned.

In each case the commander of the vessel should be informed that the reason for declining to receive or return such salutes is, that the Confederate States have not been acknowledged by this country otherwise than as belligerents.

I have, &c.,
(Signed) NEWCASTLE.

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[1] Case of the United States, p. 464.

[2] Appendix to British Case, vol. v, p. 129.

The incident which gave occasion to this is stated in the Case of Great Britain, page 70.

France.

4. The French authorities received the Sumter, Florida, Alabama, and Georgia in French ports on the footing of men-of-war, and allowed them to take in supplies of coals and provisions. The Florida and Georgia were allowed to remain several months at Brest and Cherbourg repairing. When the United States minister at Paris protested against the Florida receiving repairs of her machinery, [122] on the ground that she was a good *sailer, M. Drouyn de Lhuys replied that "if she were deprived of her machinery she would be *pro tanto* disabled, crippled, and liable, like a duck with its wings cut, to be at once caught by the United States steamers. He said it would be no fair answer to say the duck had legs, and could walk or swim.[1] He further justified the permission given to her to repair in a government dock, there being no commercial dock at Brest. The Florida having discharged seventy or seventy-five men after she came into Brest, the French government decided not to issue any order prohibiting an accession to her crew while in port, inasmuch as such accession was necessary to her navigation.[2]

The Rappahannock.

Attention has been called in the Case of the United States to the treatment of the Rappahannock at Calais, as forming a contrast to the reception of confederate vessels in British ports.[3] This vessel, an old dispatch-boat, originally called the Victor, had been sold out of the British Navy as worn out and unserviceable. She appears to have passed from the hands of her purchasers into those of agents of the Confederate States, who, fearing discovery, hurriedly carried her off in a condition unfit for sea, and took her into the harbor of Calais as a confederate ship of war, though neither equipped, manned, nor armed. The United States minister at Paris urged that this was an exceptional case, and such in fact it was. Writing to M. Drouyn de Lhuys on the 4th December, 1863, he said:

> It is quite evident that this vessel occupies a position which differs from either the Florida or Georgia. She has left her port on the other side of the channel voluntarily, without papers, and ran directly across to a neighboring port, within which she hopes to be protected until her equipment is completed, and her officers and crew ready. On this statement of facts no argument is necessary to show that permission from the French authorities to carry out her purpose would be a violation of neutrality.[4]

The French government replied that the Rappahannock appeared to have been compelled, by unforeseen circumstances, to take refuge in French waters; that she could not therefore be refused an asylum, but that the facilities accorded to her would be limited strictly to what was required for the equipment and seaworthiness of an ordinary vessel of commerce. The United States minister continued to urge the exceptional nature of the case, and, in deference to his representations, special precautions were taken to prevent any warlike equipment of the vessel. It was decided that she should not be allowed to depart without first obtaining permission, and, in order to guard against any attempt of such a kind, a gun-boat was stationed to watch her. The repairs were proceeded with, and changes were made among the crew, without adding to their number, for some time. Subsequently, however, it was discovered that her crew had been nearly doubled, and the permission for her departure was on this account provisionally refused. As she had been quite unfitted for war on her arrival, these measures rendered her practically useless for the confederate service, and her officers determined to abandon the attempt to employ her, and to leave her in the port of Calais.[1]

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[1] British Case, p. 71.

[2] Appendix to British Case, vol. vi, p. 136.

[3] Case of the United States, pp. 292, 293.

[4] Papers relating to Foreign Affairs, 1863–'64, vol. iii, pp. 4, 19, 21, 23, 235, 41, 44, 51, 53, 57, 81.

The Stonewall.

Attention has also been called to the case of the confederate steam-ram Stonewall. That vessel was one of six ships built for the confederate government in France under a contract with Captain Bullock, to be paid for out of the proceeds of the confederate loan issued through the agency of Messrs. Erlanger in Paris. According to French law, the permission of the government is required before vessels constructed in French ports can be armed for war, and this permission M. Arman, the builder of the vessels, had procured, on the pretext that they were intended for employment in the China seas. When the United States minister laid evidence before the French government of the real purpose for which these vessels were designed, the authorization to arm them was withdrawn, and an assurance was given that they should not be allowed to pass into the hands of the confederate government. M. Arman was, however, allowed to proceed with the construction of them, and they were eventually disposed of to different neutral governments. One of them was sold conditionally to the Danish government, but rejected by the officer appointed by that government to inspect her at Bordeaux, as not coming within the terms of the contract. Permission was obtained to send her to Copenhagen, from whence, the Danish Government having confirmed the decision of their officer, she returned to the French coast, shipped a crew, arms, and a supply of coal at the small island of Houat, off St. Nazaire, and proceeded on her voyage as the confederate steamer Olinde or Stonewall. The United [123] States minister at Paris thought, probably with justice, *that there were grounds for believing that the intention of using her for the confederate service had been formed before she left France, and that the sending her to Copenhagan was a mere pretext; and the French government ordered an investigation into the circumstances; but it expressly disclaimed any responsibility for what had occurred, and declined to interfere to procure the detention of the Stonewall in the Spanish port of Ferrol, to which she had proceeded.

Spain and Portugal.

5. The Stonewall arrived at Corunna on the 3d of February, 1865, from whence she removed to the neighboring port of Ferrol. In January, 1862, when the Sumter arrived in the port of Cadiz, the Spanish government had decided that she must be allowed to make such repairs as were absolutely necessary, and had for that purpose allowed her to be placed in a government dock for two days, notwithstanding the protest of the United States minister. The government came to a similar conclusion in the case of the Stonewall, and she remained at Ferrol refitting for sea till the 24th of March.

> The government of Her Majesty [wrote M. Benavides] could not disregard the voice of humanity in perfect harmony with the laws of neutrality, and does not think they are violated by allowing a vessel only the repairs strictly necessary to navigate without endangering the lives of the crew.[2]

The United States war steamers Niagara and Sacramento had in the meanwhile arrived at Corunna, from whence they kept watch on her movements. From Ferrol they followed her to Lisbon, the commander of the Niagara considering the Stonewall too formidable to cope with at sea in calm weather.[3]

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[1] Appendix to British Case, vol. ii, p. 671.

[2] Papers relating to Foreign Affairs, 1865-'66, part ii, p. 524.

[3] Ibid., p. 521.

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At Lisbon the Portuguese government allowed her to remain twenty-four hours and take in a supply of coal. On this latter point, the foreign minister of Portugal observed, in reply to the representations of the United States minister—

> Regarding the supply of coal, against which you insist, allow me to observe that the vessel being a steamer, His Majesty's government could not avoid with good foundation that she should be provided with that article, for the same reason that it could not deny to any sailing-vessel in a dismantled state to provide itself with sails.[1]

The Stonewall next proceeded to the Spanish island of Teneriffe, and from thence to Havana, where she arrived on the 11th of May, and where, at the close of the civil war, she was surrendered to the Spanish authorities by her commander on the payment of $16,000. By the Spanish government she was handed over to that of the United States. The latter repaid the sum expended in obtaining possession of her.

In the conduct of other powers, when compared with that of Great Britain, there is certainly nothing to justify the United States in preferring claims against the latter for undue partiality to confederate cruisers, while at the same time disavowing any ground of complaint against the former. It may suit the United States to give this assurance for the purposes of the present arbitration, but no such assurance can be given for the future. If the charge against Great Britain is to be held valid in the present instance, it is impossible to say what line of conduct, however scrupulous, however courteous, will protect a neutral power from demands for compensation from one or the other, or even from both, of two belligerent parties.

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[1] Papers relating to Foreign Affairs, 1865-'66, part iii, p. 113.

PART X.

CONCLUSION.

RECAPITULATION OF THE ARGUMENT FOR GREAT BRITAIN.

Part X.—Conclusion.

Recapitulation of the argument for Great Britain.

Her Majesty's government has deemed it convenient, both in the Case which it has previously presented, and in this Counter Case, to place before the arbitrators, as clearly as possible, the nature and general limits of the questions which they are about to decide.

The comparatively novel character of these questions, the importance of them, the number and variety of the facts which may be supposed to bear on them, appeared to make this course not only convenient, but necessary; and the necessity has been enhanced by a circumstance peculiar to this controversy. The war which commenced in April, 1861, and ended in May, 1865, was a civil war; and it was hard, even for a government which had again and again proclaimed itself neutral in similar contests occurring elsewhere, to reconcile itself to the assumption, in its own case, of the same attitude by other nations. Every occasion on which that neutrality had to be practically asserted was painful, and perhaps naturally painful, to the United States. But neutrality, in a war wholly or partly maritime, is not, and cannot be, as regards maritime powers, a merely negative condition. States, the most remote from the principal theater of hostilities, may yet, through their shipping, or their colonial possessions, be brought into contact with those hostilities in various parts of the world, and questions will thus arise which cannot be avoided or put aside by mere inaction. In the case of Great Britain, the points of contact, and therefore the occasions of complaint, were greatly multiplied by the diffusion of her maritime interests, the magnitude of her commercial marine, the number of her colonies, the activity of her manufacturing industries, and the almost unbounded liberty which her laws allow to trade. The feelings of annoyance which the impartial neutrality of Great Britain excited, in many ways, and under many circumstances, in the Government and people of the United States, were, it was hoped by Her Britannic Majesty's government, almost, if not quite, forgotten; these were matters, at all events, which neither this government, nor probably any other, would have thought it right to refer to any arbitrators, however carefully selected. But the claims which are submitted to the tribunal are of a different character. The United States believes them just; Great Britain believes them erroneous. Both nations agree in regarding them as proper to be referred to an independent and impartial decision. Hence, the importance of separating these claims from the various matters of complaint or causes of dissatisfaction with which they were long associated in the diplomatic correspondence of the American Government and in the minds of the American people; and of keeping plainly and steadily in view the questions with which the tribunal has actually to deal, and the facts and arguments which are properly and directly relevant to those questions.

Adhering firmly to this distinction, Her Majesty's government has, at the same time, not declined to meet and argue, within the limits prescribed by its own self-respect, and by its view of the proper scope of the reference to arbitration, the wider issues which the United States have thought proper to raise.

Endeavors were made on the part of the United States to show that, in various matters which are not referred to the arbitrators, the British government had permitted violations of its neutrality in favor of the Confederate States, while it had been rigorous in refusing to the United States the enjoyment of corresponding advantages. The arbitrators were asked to draw from hence a conclusion, which it was desired they should apply to the questions actually submitted to them for adjudication.

These complaints related substantially to the traffic in arms and munitions of war, and other articles of commerce, carried on with southern ports, from ports within the British dominions, and particularly from and through that of Nassau. The United States insisted also on the fact that the confederate government had agents in England for the purchase of what it required, and employed, as financial agents, a mercantile house in this country, to whom they remitted specie and cotton, and through whom their payments were made. [125] *But, on the part of Great Britain, it has been clearly proved that all these complaints are groundless. It has been shown that the United States, equally with the Confederate States, resorted to England for necessary supplies of arms and munitions of war, and that they also had their agents here for making purchases, as well as for their financial transactions and for the disbursement of money. It has been shown that the traffic carried on with the two communities (which, for the time, they were) differed solely in incidental circumstances, which were the natural result of the overwhelming superiority at sea possessed by the United States, and which imposed no peculiar duties on the government of Great Britain; that in all these matters no favor or accommodation was accorded to one which was denied to the other; and that the real substance of the complaints of the United States is, that Great Britain declined to assist by active interference the more powerful belligerent, and to thwart the endeavors of the weaker to obtain the necessary supplies, and that she from first to last persevered in holding an even hand between the two. It short, it is not that she departed from impartial neutrality in favor of the confederacy, but that she refused to depart from it in the interest of the United States. If, therefore, from this part of the conduct of Her Majesty's government, a presumption is to be applied to any other part, the legitimate presumption is, not that the government would be discovered to deviate from the line of an impartial neutrality, but that it would scrupulously and steadily adhere to that line.

Is, then, this presumption found to fail, when we approach the questions which are really before the arbitrators, and which relate exclusively to the particular vessels enumerated in the Case of the United States? Her Majesty's government maintains that it is not. In the Case which it has presented, and in this Counter Case, the British government has fully stated to the arbitrators the measures adopted to prevent the equipment in its ports of belligerent ships of war, and the departure from its ports of vessels specially adapted for warlike use and intended for the naval service of either belligerent; explaining at the same time the peculiar difficulties which, in a country like Great Britain, must always attend the enforcement of such a prohibition, the powers with which the government was armed by law, and the restraints which the law imposed on it—restraints judged expedient in England for the due security of property and civil liberty and for the proper administration of justice. All the cases of alleged or suspected equipment or warlike adaptation which occurred during the war have been stated in order to the arbitrators; and they have thus been enabled to take a connected view of the manner in which these cases were dealt with by the government, and the general course which it followed in regard to them.

In connection with this part of the subject the question naturally arises, what measure of care or diligence can reasonably be expected in matters of this kind from a neutral government—or, to speak more exactly, ought to be held due from such a government as a matter of international obligation. The United States have attempted to furnish a definition of this, which to the British government appears not only to fail as a definition, but to exact more than neutral powers could safely or rightly concede, and much more than has ever been practiced by the United States themselves. In illustration of this, and for no purpose of recrimination or reproach, it has been found necessary to refer to the past and recent history of the United States, not only as being the power which now produces this very strict definition of due diligence, but as the country which has been the principal seat and source of enterprises, such as those for which it now seeks to make Great Britain responsible. It has been necessary to exhibit the striking contrast between the course of the American Government in dealing with enterprises against friendly states within its territory renewed again and again, and always with impunity, during a long series of years, and the iron rigor of the rules it now seeks to enforce against Great Britain, the perfection of administrative organization it seeks to exact from her. The views of Her Majesty's government as to what constitutes a reasonable measure of diligence or care have, in its Case and Counter Case, been stated in general terms. But this government has refrained from the attempt, in which the United States, as it conceives, have failed; and it has left the arbitrators to judge of the facts presented to them by the light of reason and justice, aided by that knowledge of the general powers and duties of administrative government which they possess as persons long conversant with public affairs.

Proceeding to the several cruisers to which the claims of the United States relate, Her Majesty's government has been compelled to observe, in the first place, that an award against Great Britain as to any one or more of them could not be supported by broad general allegations, but must be founded on some specific failure or failures of duty alleged and proved in respect of that ship or those ships; in the second place, that, in deciding whether a failure of duty was or was not committed, the arbitrators have to consider, not what has since been discovered, [126] or what the members of the tribunal now know respecting *these ships, but the information which the British government actually possessed, or, by the exercise of reasonable care, ought to have possessed, at the time. They have to place themselves in the situation in which this government then was, in order to judge fairly whether it failed in the performance of its duties. As to each vessel, the original outfit of which is made matter of complaint, they have to be satisfied, first, that she was, in fact, armed, fitted out, or equipped for war within the British territory, or specially adapted within it to warlike use; secondly, that the Queen's government had reasonable grounds to believe that she was intended to cruise or carry on war against the United States; thirdly, that, having such reasonable ground of belief, the government did not use due diligence to prevent her equipment, or else to prevent her departure. It is not enough to prove one of these things, or two; it is necessary to prove all three of them.• It has been further pointed out that, when we speak of a government having reasonable grounds of belief, (the matter in question being the prevention of an apprehended act by the enforcement of a law,) we mean that it has more than a suspicion founded on general rumor or mere probabilities; that it has reasons, which can be exposed in due time to the test of judicial inquiry, for such a belief as is sufficient to justify it in setting the machinery of the law in motion.

In the case of the Alabama it has never been denied by Great Britain that she was a vessel specially adapted by her construction for warlike use, nor that she was thus constructed in a British port. Nor is it denied that, at the time of her departure from England, the government had obtained reasonable ground to believe that she was intended for the naval service of the Confederate States. But it has been shown that this necessary information was not put into the possession of the government or its officers by the minister or consul of the United States until a very short time before the departure of the ship, either through a want of due diligence on their part, or (which is more probable) because they had not, up to that time, been able to procure it themselves. It has been shown, also, that no time was lost by the government in consulting its legal advisers as to the sufficiency and credibility of this evidence, which was a question of reasonable doubt; and that the order for detention which, in the event, came too late, was deferred only till their opinion should be obtained. It has been shown further that the information possessed by the government related solely to the vessel herself, which was known to be unarmed, though adapted by her construction for war. Of the intended dispatch of arms for her nothing was known to the government; nothing was known—certainly nothing was communicated—by the officials of the United States. Her Majesty's government submits to the arbitrators that, on the facts stated and proved, no failure of duty has been established against Great Britain in respect of which compensation ought to be awarded to the United States.

In the case of the Florida it has been shown that the British government had not, at or before the time of her departure from England, any reasonable ground to believe that she was intended to cruise or carry on war against the United States, and that no information on which a reasonable belief could be founded had, up to that time, been produced by Mr. Dudley or Mr. Adams. It has been further shown that she was seized at the Bahamas by the authority of the colonial government; and, after a fair, open, and regular trial in a court of competent jurisdiction, was released by judicial decree. And it has been likewise shown that the cruise in which all her prizes were made was commenced from the confederate port of Mobile, in which port she was manned and fitted out for that cruise. Her Majesty's government submits therefore that, in respect of this ship, no failure of duty has been established against Great Britain on account of which compensation ought to be awarded to the United States.

In the cases of the Georgia and Shenandoah, it has been shown that neither vessel was armed, fitted out, or equipped for war, or specially adapted, either wholly or in part, for warlike use within British territory; and, further, that Her Majesty's government had not, at the time when they respectively left England, any reasonable ground to believe that they, or either of them, were or was intended to cruise or carry on war against the United States. Efforts have, it is true, been made to show that the Shenandoah was enabled to ship a considerable addition to her crew at Melbourne, by the connivance or culpable negligence of the colonial authorities; but this charge, which has nothing to do with the original outfit of the ship, and is one which from its nature would require to be supported by the clearest evidence, is not so substantiated, and is, on the contrary, disproved by the facts. No failure of duty has been established against Her Majesty's government in respect of either of these vessels.

In the case of the Tallahassee amd Chickamauga, it has been seen that no failure of duty has been even alleged, much less proved, against Great Britain. These vessels were built, indeed, in England, but [127] they were built and used as ships of commerce; it was by *an after-thought that they were armed for war; and their employment as ships of war lasted but a few weeks in the one case, and but a few days in the other. They were armed in, and dispatched from, a confederate port, and to the same confederate port they returned.

The Sumter and Nashville were not even built in the Queen's dominions, and in respect of their original outfit, nothing is or can be alleged against Her Majesty's government. Setting aside some other minor complaints, which will not bear a moment's examination, it is suggested only that they received in British ports such hospitalities as were extended to confederate vessels in general in the ports of neutral nations.

In the case of the Retribution, the facts alleged show nothing more than that her commander contrived on one occasion, by fraudulently personating the master of a prize captured by him, and concealing the fact that she was a prize, to dispose of the cargo in a small island of the Bahama archipelago, remote from the seat of government; and that, on another occasion, by means of a fraudulent conspiracy with a party of "wreckers," he managed to carry a prize into the same place and to extort, through the wreckers, from her master and owners, a ransom, under pretense of salvage. These facts, if proved, establish no failure of duty against Great Britain.

Her Majesty's government deems itself entitled to observe that the later cases in this list throw a strong light upon the earlier ones. They show very clearly what are the views of international obligation and international justice on which the claims of the United States are founded. If Great Britain is liable for the captures of the Tallahassee and Chickamauga, what necessity is there for endeavoring to show that, in those of the Florida and Alabama, the British government had reasonable ground to believe, or even to suspect, the existence of an unlawful intention? If she is liable in those of the Sumter and Nashville, it is superfluous to prove even equipment or construction in British territory. If she is liable for the Retribution, what need, it may be asked, of any definite charge, of any proof or evidence at all?

It must not be forgotten that, besides the various cruisers in respect of which claims are now made by the United States Government against Great Britain, there were at least ten others which were fitted out and sent to sea from confederate ports in the course of the war, (the Calhoun, Jefferson Davis, Savannah, Echo, Saint Nicholas, Winslow, York, McRae, Judah, and Petrel;) and that by at least eight of these depredations were committed upon the merchant shipping of the United

States.[1] There were also the Boston and the Sallie, which are included (without any apparent reason) in the summary of claims contained in volume vii of the Appendix to the Case of the United States, but of which, in the case itself, no mention is made.

It will not have escaped the notice of the arbitrators that the cases of the Florida and Alabama occurred at a very early period of the war. That of the Florida occurred in the first year of it; that of the Alabama very soon afterward, and before the true character of the Florida, or the purpose for which she was destined, was or could be known in England. In dealing with a charge of negligence brought by one nation against another, this is a material fact. A government which finds itself compelled, by the outbreak of civil war in another country, to assume the character of a neutral, must learn, by practical experience, the necessity for various measures of precaution which were never called for before. The United States, therefore, find it necessary to allege more than this, and to charge the British government with a want of promptitude and activity continued after circumstances had proved this need of unusual precautions. And, in connection with this charge, and as a proof of it, they have dwelt on the fact that no alteration was made, during the war, in the laws of Great Britain, although the Government of the United States is alleged to have asked that these laws might be made more effective.

Her Majesty's government has to observe upon this point that the United States have failed, or forborne, to point out wherein the law of Great Britain required alteration, and this for a very plain reason.

The law of Great Britain on this subject was stricter and more comprehensive in some of its prohibitions, and more severe in some of its penalties, than the corresponding law of the United States; and, except in those points in which the British law was of superior efficiency, both were substantially the same. The first suggestion of any alteration of the law proceeded, not from Mr. Adams, (who, in the case of the Alabama, had stated, on the 9th October, 1862, that he based his
[128] representations "upon evidence which applied directly *to infringements of the municipal law itself, and not to anything
beyond it,")[2] but from Earl Russell, who, on the 19th December, 1862, wrote thus to Mr. Adams:

> I have the honor to inform you that Her Majesty's government, after consultation with the law-officers of the Crown, are of opinion that certain amendments might be introduced into the foreign-enlistment act, which, if sanctioned by Parliament, would have the effect of giving greater power to the executive to prevent the construction, in British ports, of ships destined for the use of belligerents. But Her Majesty's government consider that, before submitting any proposals of that sort to Parliament, it would be desirable that they should previously communicate with the Government of the United States, and ascertain whether that Government is willing to make similar alterations in its own foreign-enlistment act, and that the amendments, like the original statute, should, as it were, proceed *pari passu* in both countries. I shall accordingly be ready to confer at any time with you, and to listen to any suggestions which you may have to make, by which the British foreign-enlistment act and the corresponding statute of the United States may be made more efficient for their purpose.[3]

This communication was courteously received by the Government of the United States, which professed themselves to be willing to consider any propositions which the British government might desire to make; but they offered no suggestion on their own part. On the contrary, Mr. Adams distinctly stated to Earl Russell, on the 14th February, 1863, that they did not see how their own law on this subject could be improved;" (or, as Mr. Adams reported the same conversation to his own Government, that "the law of the United States was considered as of very sufficient vigor.")[1] Earl Russell then rejoined, that the administration of which he was a member had, on more mature consideration, come to a similar conclusion; and "that no further proceedings need be taken at present on the subject."

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[1] See the general list of claims filed in the Department of State of the United States, Appendix to Case of the United States, vol. iv, p. 446, *et seq.*

[2] Appendix to Case of United States, vol. iii, p. 51.

[3] Ibid., p. 92.

On a later date (27th March, 1863,) Lord Russell told Lord Lyons that the subject had again been mentioned:

> With respect to the law itself, Mr. Adams said, either it was sufficient for the purpose of neutrality, and then let the British government enforce it, or it was insufficient, and then let the British government apply to Parliament to amend it. I said that the cabinet were of opinion that the law was sufficient; but that legal evidence could not always be procured.[2]

On another occasion Lord Russell gave Mr. Adams an answer substantially the same as Mr. J. Q. Adams, as Secretary of State, had returned to a similar suggestion made by the minister of Portugal: "The Alabama has avoided seizure through the inadequacy of the evidence, not through a defect in the law."

The correspondence between the two governments prior to the termination of the war does not justify the statement made at page 113 of the Case of the United States, that "the United States repeatedly, and in vain, invited Her Majesty's government to amend the British foreign-enlistment act." The only foundation for that statement appears to be that Mr. Adams, in a letter to Earl Russell of the 20th May, 1865, spoke of "the inefficiency of the law" on which the British government relied; and of "their absolute refusal, when solicited, to procure additional powers to attain the object."[3] Nor was it until the 18th September, 1865, (when the war was over,) that Mr. Adams suggested to Earl Russell that there were certain of the "main provisions" of the law of the United States on this subject, viz, "those very same sections which were originally enacted in 1817, as a temporary law, on the complaint of the Portuguese minister, and made permanent in that of 1818," which were not found in the law of Great Britain; adding, "It is in these very sections that our experience has shown us to reside the best preventive force in the whole law."[4] To this suggestion a very conclusive reply was made by Earl Russell on the 3d November, 1865, (the accuracy of which has since been admitted even by American writers most strenuous in their advocacy of the claims against Great Britain,) viz, that the sections of the American acts of 1817 and 1818 referred to by Mr. Adams, which are commonly known as the "bonding clauses," "proved utterly inefficacious to prevent the fitting out of privateers at Baltimore," and were also so strictly limited to "armed" vessels, or vessels carrying a cargo "consisting principally of arms and munitions of war," as to be wholly inapplicable (even if they had been in force in Great Britain) to the Alabama, Florida, Georgia, Shenandoah, and vessels of that class.[5]

Under these circumstances no alteration was attempted to be made in the law of Great Britain on this subject during the war, when it might have been attended with serious difficulties, and might [129] have been objected to as inconsistent with neutrality. Her *Majesty's government believed that the existing law would be found sufficient in all cases in which evidence of its infringement might be forthcoming, to stop those enterprises, of which the United States had a right to complain; and the result was not such as to disappoint its expectations.

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[1] Appendix to Case of United States, vol. i, p. 668.
[2] Ibid., p. 670.
[3] Ibid., vol. iii, p. 533.
[4] Ibid., p. 572.
[5] Ibid., p. 587.

After the close of the war, Lord Clarendon, in a dispatch to Sir F. Bruce, December 26, 1865, made a new overture to Mr. Adams for the adoption, concurrently by both nations, of measures calculated to bring about such improvements in the code of international law, as experience might have shown to be necessary. "Mr. Adams," he reports, "in reply said, that the law of England, in its international application, stood greatly in need of amendment, but he gave me no encouragement to expect that his Government would co-operate with that of Her Majesty in the course of proceeding which I had suggested."[1]

Afterward, in 1867, a royal commission was appointed by the British government to consider whether it was expedient to make any and what amendments in the neutrality laws of Great Britain; and the result of their labors was an act of Parliament, passed in 1870, by which the British government has been armed with much more stringent powers of control than it before possessed, over all trading or other operations of its citizens engaged in ship-building, which might have a tendency to compromise its neutrality or to disturb its friendly relations with belligerent powers. No similar powers are vested in the Government of the United States by the act of Congress of 1818. Yet, as to this British statute, the United States have suggested (at page 118 of their Case) that its provisions "were intended, at least as against the British government, as a re-enactment of the law of nations, as understood by the United States to be applicable to the cases of the Alabama and other ships of war constructed in England for the use of the insurgents."

It might have been expected, if this were the view taken by the United States of the recent British legislation of 1870, that something would have been done, or at least attempted, by the legislature of the United States, to bring their own neutrality laws to an equal degree of efficiency. So far from this, it will be found that their law of 1817-'18 was designedly, and not through any mere inadvertence, restricted within its present limits; and that the only proposal for a change in that law which has yet been made to Congress, since the termination of the civil war, was in a precisely opposite direction.

A comparison of the provisions of the existing neutrality law of the United States with the British law which was in force during the whole of the late contest, (derived entirely from an American source, beyond suspicion of partiality,) will be found, with some other particulars, bearing on this immediate subject, in annex (B) to the present Counter Case.

But it must be observed further, that a state is under no obligation to make changes in its laws at the instance of another state. All that it has to do is to take care that its international obligations are fulfilled. Were not the international obligations of Great Britain fulfilled from 1862 to 1865? The arbitrators have had ample proof that they were so. Ship after ship was seized and detained—at what cost in some cases, and under what circumstances of difficulty, they have already seen. No armed vessel at any time sailed from a British port for the service of the confederates. From July, 1862, to the end of the war, not a single vessel equipped or specially adapted by construction or otherwise for war was able to leave any British port for the confederate service; and not a single vessel, of which the government had any information, sailed, even without warlike equipment or adaptation, with the intention that she should be employed in that service. In the documents produced by the United States there are repeated statements to the effect that many formidable vessels had been contracted for by the agents of the Confederate States in England. What became of these contracts? They appear to have been abandoned, and the confederate government had recourse to France, whence, though foiled in some other instances, they obtained the iron-clad Stonewall.[1]

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[1] Appendix to the Case of the United States, vol. iii, p. 627.

This charge therefore vanishes, and the decision of the British [130] government not to *propose any alteration of its laws to Parliament while a war was in progress, but to reserve the whole question for later and more deliberate consideration, can certainly afford no cause of complaint to the United States.

There is, however, another class of charges, quite distinct from those reviewed above, by accumulating which it is apparently sought, in the Case of the United States, to make good the deficiencies of the latter. These relate to the hospitalities afforded in ports of the British empire to confederate cruisers, and to the undue favor or partiality which is alleged to have been shown to them by the local authorities. The arbitrators know what is the general character of these complaints. That a vessel of war may have contrived to ship a few more tons of coal or a few more casks of beef or biscuit, or to stay in port a day or two longer than strict necessity required; that precautions which ought to be needless in dealing with naval officers (who are men of honor) may sometimes have been omitted or not suspiciously enforced, that any civility, of the most trivial and ordinary kind, was extended to the commander of a confederate vessel—these are the grievances on which the United States ask a tribunal of arbitration to pass judgment, and on which they rely as assisting their claim for compensation against Great Britain.

It is evident that, if all these complaints could be proved, they would not support a demand for compensation; nor are they really within the scope of the reference to arbitration.

The restrictions which were imposed by the Queen's regulations on belligerent vessels, entering ports within her dominions, were not required by international law. They were made, and they might have been revoked, in the exercise of those discretionary powers which are vested in all sovereign governments. All that Great Britain owed the United States on this score was, that they should be enforced, fairly and impartially, on both belligerents alike. In the section of this Counter Case which has been devoted to that subject all these complaints have been reviewed and answered, in a manner which Her Majesty's government would fain hope will prove convincing, not only to the arbitrators, but to the United States. It would, indeed, be no matter of surprise, and would afford no great occasion for censure, if it should be found that, among the widely scattered colonial possessions of the British Empire, some errors of judgment had been committed, and that difficulties new to the local authorities, and often very embarrassing, had not always been satisfactorily met. But it must surely be plain to every one who reads this recital that the governors of the various British colonies executed the regulations to the best of their judgment and ability, and with thorough impartiality as between the two belligerents. It is difficult, indeed, to avoid the conclusion that these complaints spring from imperfect information. When, for example, it is asserted that the cruisers of the United States were virtually excluded from the chief port of the Bahama Islands, in favor of confederate cruisers, and we discover that these islands were thirty-four times visited by the former, while Nassau was but twice visited by the latter; or, when the quantity of coal obtained by confederate ships is made a matter of complaint, and we find that a single United States vessel, within six weeks, contrived to procure from three British ports more than two-thirds of the amount ascertained to have been purchased within Her Majesty's dominions by all the confederate ships together during the whole course of the war, can we doubt that the Government of the United States is laboring under serious misapprehensions?

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[1] The arbitrators are referred to Sinclair's letter, (24th September, 1863,) quoted in the Case of Great Britain, p. 45:

"When I made a contract with you in November last for the building of a steamship, I was under the impression, having taken legal advice, that there was nothing in the law of England that would prevent a British subject from building such a vessel for any foreign subject as a commercial transaction. Although the recent decision in the court of exchequer in the case of the Alexandra would seem to sustain the opinion, yet the evident determination of your government to yield to the pressure of the United States minister, and prevent the sailing of any vessel that may be suspected of being the property of a citizen of the Confederate States, is made so manifest that I have concluded it will be better for me to endeavor to close the contract referred to, and go where I can have more liberal action."

The British colonies were, it is true, often resorted to by belligerent vessels of war; but their most frequent visitors were cruisers of the United States; and, if infractions of Her Majesty's regulations were sometimes committed, these cruisers were the most frequent offenders.

COMPENSATION CLAIMED BY THE UNITED STATES.—GENERAL PRINCIPLES.

The British government then, on this summary review of the facts and arguments adduced by the United States, submits to the arbitrators that no failure of duty has been established against Great Britain in respect of any of the vessels enumerated in the case. But, since the arbitrators are to judge, and, as it is necessary for every party to an arbitration to contemplate the possibility that on some points the award may not be in his favor, something ought here to be said on the claims for compensation urged by the United States, and on the proper mode of dealing with such claims.

Her Majesty's government readily admits the general principle that, where an injury has been done by one nation to another, a claim for some appropriate redress arises, and that it is on all accounts desirable that this right should be satisfied by amicable reparation, instead of being enforced by war. All civil society reposes on this principle, or on a principle analogous to this; the society of nations, as well as that which unites the individual [131] *members of each particular commonwealth. But the general principle carries us but a little way. Before it can be applied in practice various considerations interpose themselves, which are as necessary to guard against injustice in one direction, as the principle itself is to prevent or remedy it in another. It is not necessary to enumerate all these considerations.

Compensation claimed by the United States. General principle.

Here it is enough to say that the reparation claimed should never exceed the amount of the loss which can be clearly shown to have been actually caused by the alleged injury; and that it should bear some reasonable proportion, not only to the loss consequent on the act or omission, but to the gravity of the act or omission itself. A slight default may have in some way contributed to a very great injury; but it is by no means true that, in such a case, the greatness of the loss is to be regarded as furnishing the just measure of reparation, without regard to the venial character of the default. It is needless to show this by examples. Many illustrations of it will suggest themselves to the minds of the arbitrators.

There may be cases, doubtless, in which considerations of this kind do not demand to be taken into account. But it is manifest that they apply very forcibly to defaults such as are charged, and claims such as are made, by the United States against Great Britain. The substance of the charge in this class of cases is, that a belligerent has been enabled to make use of some spot within the neutral territory for purposes of war, through a relaxation of the care which the neutral government ought to have exerted to prevent it. It is not true that the default of the neutral is the cause of the losses sustained. It is certainly not the *causa causans*; it need not even be the *causa sine qua non*. The most that can be alleged is that, if greater diligence had been used, those losses might perhaps have been prevented, and, at all events, would not have happened by the same means and in the same way. The losses complained of are losses inflicted by the ordinary and legitimate operations of war, which are alleged to have been facilitated by the neglect of the neutral. But the active and direct agent in the infliction of loss is the belligerent, and he inflicts it in ways which, as between him and his enemy, are lawful; the only share in it which can be ascribed to the neutral is indirect and passive, and consists in an unintentional omission. Further, if we attempt to pursue this share of liability, springing from neglect alone, through the operations, naval or military, to which the neglect is alleged to have contributed—through successive battles, through a cruise or a campaign—we see that it escapes from any precise estimate, and soon loses itself among the multitude of causes, positive or negative, direct or indirect, distinct or obscure, which combine to give success to one belligerent or the other, and to which the proverbial uncertainty of war is due. This is clearly seen when the principle is applied to the case of a ship which has been armed or adapted for war, or has had her warlike force augmented, in neutral territory. We speak, for the sake of brevity, of the "acts" of a ship, of prizes made or losses inflicted by her, as if the power and responsibility of doing hurt adhered to the vessel herself. But the acts of a ship are the acts of the persons who have possession and control of her; the ship herself—which is only a vehicle of wood or iron, serving, if armed, the purpose of a floating fortress—is but the instrument, or rather one of the instruments, with which those acts are done.

The same thing is seen more clearly still when we come to apply the principle to cases where the equipment or adaptation is manifest but partial. A danger here arises of being misled by a false analogy. Any equipment, however partial, in a neutral port, such as the shipping of a gun, the cutting of a port-hole, the addition of a magazine or shell-room to the internal fittings of a ship, might justify the neutral power in restoring all prizes made by her during the cruise to which the partial equipment was applied, and afterward brought within the neutral territory. The ground on which the restitution is decreed here is, that there has been a violation of the neutrality of the territory; and it matters not whether that violation were great or small. But if, in such a case, it be possible to show that the partial equipment had been made through neglect on the part of the authorities of the port, and if reparation for the neglect be demanded, how are we to assess the liability of the neutral? To assign the whole damage which the ship may do during her cruise to the neglect of the neutral, would be extravagantly unjust; to allot with precision any specific proportion of it to the same cause, would almost certainly be impracticable.

Further, when the neutral country from which a ship of war, or an equipment, or an augmentation of force has been obtained, is only one of several countries to which the belligerent has access for similar purposes, it is impossible to assume that the consequence of the prevention of a particular adventure of this kind would have been to deprive that belligerent of the means of accomplishing his purpose; its only effect might have been to change the immediate direction of his endeavors. Thus, in the case of the rams at Birkenhead, the responsibility arising out of the contract between the builders and Bullock was sought to be got rid of, by a transfer of the benefit of that contract to a [132] *Frenchman named Bravay, who pretended that his object was to dispose of them to other powers, and not to the Confederate States; and when the confederate agents found it impracticable to obtain those vessels from a British port, they succeeded in procuring and carrying to sea another similar ram, the Stonewall, from a port in France.

When any vessels, whether procured from Great Britain or otherwise obtained, had become confederate ships of war, the duty of repelling their hostile proceedings by all proper and efficient means (like the rest of the operations necessary for the conduct of the war) devolved exclusively upon the United States, and not upon the British government. Over the measure taken by the United States for that purpose Great Britain could exercise no influence or control; nor can she be held responsible, in any degree, for their delay, their neglect, or their insufficiency. Any want of skill or success, even in the operations by land, would have the effect of prolonging the period during which cruisers of this nature could be continued. All losses, which might have been prevented by the use of more skillful or more energetic means, ought justly to be ascribed to a want of due diligence on the part of the Government of the United States, and not to any error, at an earlier stage, of the British government. *Causa proxima, non remota spectatur.*

In short, there are difficulties of no inconsiderable force in holding that defaults of this class draw with them any definite liability to make pecuniary reparation. It is difficult—very often it is practically impossible—to ascertain, with any approach to accuracy, what measure of loss ought with justice to be ascribed to the default complained of, or even, perhaps, whether it was a substantial cause of any loss at all.

For this reason, probably, as well as from the reluctance usually felt to bring accusations of negligence against a friendly government, claims such as the United States now urge against Great Britain have rarely been made; and have never, so far as Her Majesty's government is aware, been conceded or recognized. Where prizes made by vessels armed for war, or which have augmented their warlike force, within neutral territory, have afterward been brought within the jurisdiction of the neutral, it is the acknowledged right, and it may be the duty, of the neutral power to cause them to be restored on application. Beyond this point no recognized neutral authority or established precedent has hitherto extended the liability of the neutral.

If the conduct of the United States under similar (or, rather, under much stronger) circumstances, were made the measure of their right to indemnification in the present inquiry; if the rule of compensation were sought in the precedent (to which they have themselves, in their own Case, appealed) of the treaty of 1794, between the United States and Great Britain, and in the decisions of the commissions under the seventh article of that treaty, no pecuniary compensation whatever could be found due from Great Britain for any captures made at sea, and not brought into British ports; although the vessels which made those captures may have been illegally fitted out in, and dispatched from, British ports, through some want of due diligence on the part of British authorities.

If the relative positions of the government of the Confederate States and its officers, to whose acts the losses in question are directly attributable, and of the British government (whose neutrality they violated) toward the United States, who now make these claims, are justly estimated, the more difficult it will be to see how (upon the supposition of a want of due diligence on the part of Great Britain in guarding her own neutrality) any pecuniary compensation whatever can be claimed from Great Britain. The whole responsibility of the acts which caused these losses belonged, primarily, to the Confederate States; they were all done by them, beyond the jurisdiction and control of Great Britain; wrong was done by them to Great Britain, in the very infraction of her laws, which constitutes the foundation of the present claims. But from them no pecuniary reparation whatever for these losses has been, or is now, exacted by the conquerors; what has been condoned to the principals is sought to be exacted from those who were, at the most, passively accessory to those losses, through a wrong done to them and against their will. The very States which did the wrong are part of the United States, who now seek to throw the pecuniary liability for that wrong solely and exclusively upon Great Britain, herself (as far, at least, as they are concerned) the injured party. They have been re-admitted to their former full participation in the rights and privileges of the Federal Constitution; they send their members to the Senate and the House of Representatives; they take part in the election of the President; they would share in any benefit which the public revenue of the United States might derive from whatever might be awarded by the arbitrators to be paid by Great Britain. On what principle of international equity can a federal commonwealth, so composed, seek to throw upon a neutral, assumed at the most to have been guilty of some degree of negligence, liabilities which belonged in the first degree to its own citizens, with whom it has now re-entered into relations of political unity, and from which it has wholly absolved those citizens?

[133] *The British government, however, while deeming it right to present these considerations to the notice of the arbitrators, will not omit to deal with the ulterior questions which must arise, in the event of the arbitrators being of opinion that claims of this nature are not absolutely inadmissible, should the United States succeed in establishing any failure of duty sufficient to support them in the judgment of the tribunal. Nor does it affirm that, in that case, no award of compensation ought to be made, unless the amount of loss properly assignable to the default can be estimated with exact precision. But it firmly maintains that the duty intrusted to the tribunal would not be satisfied by finding, as to any particular ship, that Great Britain had failed to discharge some international duty, and then proceeding at once to charge her with all the losses directly occasioned to the United States by the operations of that ship. This, indeed, would be so manifest an injustice that it is needless to argue against it. Should the

arbitrators be satisfied that, as to any ship, and in any particular, there has been a clearly ascertained default on the part of Great Britain, it would then become their duty to examine wherein the default consisted, and whether it was a just ground for pecuniary reparation; and, if so, to determine the general limits of the liability incurred, having regard both to the nature and gravity of the default itself, and the proportion of loss justly and reasonably assignable to it. The liability thus determined, or the aggregate of such liabilities, as the case may be, constitutes, it is evident, the only just measure of the compensation, if any, to be awarded to the United States. The basis of the award must be the fact, established to the satisfaction of the arbitrators, that certain losses have been sustained on the one side, which are justly attributable to certain specific failures of duty on the other, in respect of a certain ship or ships; and the basis of the award must also be the basis for computing the sum to be awarded. The power of awarding a gross sum does not, it need hardly be observed, authorize the arbitrators to depart, in substance, from this basis, although it may relieve them from the necessity of a minute inquiry into the particulars of alleged losses, and from intricate and perhaps inconclusive calculations.

The arbitrators will have observed the manner in which these claims are dealt with in the Case of the United States. Specific failures of duty on the part of Great Britain are alleged in respect of each of the vessels enumerated. Great Britain is then charged indiscriminately with all the losses occasioned by the acts of all the vessels, and, in addition, with expenses said to have been incurred by the Government of the United States in vainly endeavoring to capture them. Thus, the Florida and Alabama were obtained as unarmed vessels from England; one was armed in Portuguese waters, the other was manned and made capable of cruising in a confederate port. Great Britain is called upon to pay for all the losses which can be attributed to the Florida and Alabama—nay, more, for all losses occasioned by other vessels which were captured and armed at sea by the commanders of those cruisers. The Tallahassee was built as a trading-vessel in England, and was afterward converted into a ship of war in the Confederate States. This country is to pay for all the captures of the Tallahassee. The Sumter received ordinary hospitalities in a British port; and Great Britain is to be charged with captures made by the Sumter. Interest on the amount of these losses and expenses is also asked for, to be computed at seven per cent. per annum from the 1st July, 1863—a date long antecedent to the dates at which a large proportion of the alleged losses and expenses are stated to have been incurred.

In calculating the losses themselves, which is a separate branch of the question, the American Government appears to have presented, without discrimination, all claims which any persons, alleging themselves to have been interested in captured ships or cargoes, have thought proper to make. Claims are also presented for public property of the United States, captured or destroyed by some of the confederate cruisers, and, further, for expenditure stated to have been incurred in the "pursuit" of these cruisers.

The claims presented under these three heads have been referred for examination to departments of Her Majesty's government conversant with the classes of matters to which the claims relate; and the results of this examination are embodied in two reports, to which Her Majesty's government requests the attention of the arbitrators.[1] The object of the examination has been to discover how far, on the data furnished by the United States themselves, the estimate of losses alleged to have been sustained, and of expenditure alleged to have been incurred, could be regarded as reasonable estimates, *prima facie*, of losses actually sustained, and of an expenditure which could, on any hypothesis, be held chargeable upon Great Britain. Whether, on the facts proved before the arbitrators, Great Britain ought to be charged with any, and [134] what part of the losses sustained, is of course a *distinct question; and it is again a distinct question whether, upon any sound principle, she ought to be charged with any, and what part, of the alleged expenditure.

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[1] These reports will be found in vol. vii of the Appendix to the Case of Great Britain.

CLAIMS FOR PRIVATE LOSSES.

Claims for private losses.

A reference to the first of these reports (that from the committee appointed by the board of trade) will convince the arbitrators that no reliance can be placed on the estimate presented of alleged private losses, and that were the tribunal to hold Great Britain liable in respect of any one or more of the enumerated cruisers, and to decide on awarding a gross sum for compensation, these estimates could not safely be accepted as furnishing even a *prima facie* basis for the computation of such a gross sum.

These claims include—

1. Claims for the value of ships, freighted with cargo, destroyed by confederate cruisers; for the consequent loss of freight, and for the value of the cargo.
2. Claims for vessels in ballast.
3. Claims by owners of whaling and fishing vessels destroyed; for the value of the vessels themselves; for the oil and fish which were on board of them, and also for the gross earnings which it is supposed they might have realized if their voyages had not been interrupted by capture; in other words, for prospective and speculative earnings.
4. Claims by American insurance companies in respect of insurances on ships, cargoes, freights, and profits, which are alleged to have been lost or destroyed by the capture of the vessels.
5. Claims for masters' wages, for personal effects taken or destroyed, and personal damages.

On the claims presented under the first head the following observations, among others, are made in the report:

> It will at once be admitted, by those who are at all familiar with the practice of the courts in maritime cases, that it is impossible to place much reliance on the opinion or evidence of ship-owners or merchants as to the value of property which they are seeking to recover. Ship-owners are in the habit of founding their estimate, not on what would be the market-price of the vessel at the time of her loss, but on the original cost-price, and often take into account the amounts which they have expended at different times without making any proper deduction for the wear and tear and damage which has been sustained. Merchants are inclined to estimate the value of their goods by the profits which they had hoped to realize, without making any allowance for the risk of the market-price falling or other contingencies on which those profits so often depend.
>
> A striking illustration of the truth of these remarks may be found in the case of the British vessel which was sunk in the river Seine in the course of the military operations conducted by the German armies in the recent war with France. The owners presented a claim for £20,270; but when this claim, which was intrusted for investigation by the German government to Her Majesty's government, was sifted and examined by the board of trade, it was found, in accordance with the very able report of the learned registrar of the court of admiralty, that the owners were not entitled to any larger amount than £6,899.
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> There is, to say the least, no reason to suppose that the statements made by the claimants in the present case as to the values of the vessels, their freights, earnings, and cargoes, are more trustworthy than such statements are generally found to be when

properly tested and examined. We find, for instance, as we have already stated, ship-owners putting forward claims for full freights and earnings, without making any deductions whatsoever, so that they are, in effect, demanding profits at a rate exceeding 200 per cent., and sometimes exceeding 2,000 per cent., per annum. We find in that class of claims which we noticed in the first place, and which are the most important as regards amount, the owners of whaling-vessels demanding the whole value of their ships and outfits, although they have received more than $700,000 from insurance companies, who at the same time, and in addition, put forward a claim for the same amount. We find the charterer claiming for the loss of the charter-party, or his profit thereon, while the ship-owner demands the freight in full; and finally, we find merchants claiming profits on their goods at the rate of 30 and 40, and even 50, per cent. per annum, without making any allowance for freight and for charges payable at the port of destination. Under these circumstances we think it right to express, most emphatically, our dissent from the assertion made in page 471 in the sixth part of the American Case, "that the statement shows all the facts necessary to enable the tribunal to reach a conclusion as to the amount of injury committed by the cruisers." On the contrary, that this assertion was not in any degree warranted will appear from the two following radical defects in the statement: In the first place, as regards the ships, neither their age nor their class is given, and in some cases not even their tonnage; as regards the cargoes, in no instance do the claims specify the quantity either in measurement or weight, and in the cases of ships loaded with general cargo the quality or description of the goods is not even mentioned or indicated. In the second place, the statement is framed, to say the least, in so imperfect a manner that, in the majority of cases, it is impossible to ascertain even what is the value given by the claimants themselves to their own property.[1]

[135] *Under the second head very large sums are claimed as gross freights for vessels which had no cargo on board, which might never have been loaded with cargo, and which could not have earned these freights without very heavy expenditure and considerable wear and tear, consumption of stores, and depreciation of ship and outfit; freights also, which would not have been received, if at all, until after the lapse, in each case, of a very long period subsequent to the date of the capture.

On claims under the third head it is observed:

The whaling and fishing voyages for which these vessels, vessels generally of small tonnage, are equipped, provisioned, and outfitted, extend over long periods, rarely of less than three or four years, so that the outfit and stores with which they are originally provided are of proportionately great value; in fact, in the great majority of cases, of much greater value than the vessels themselves. In the course of these voyages the vessels put into port from time to time, and disbursements are made by the masters, who draw for this purpose upon their owners, and the master and crew, in lieu of wages, generally receive a share of the vessel's earnings. At the end of the voyages the vessels are necessarily very considerably deteriorated by wear and tear, their stores are almost entirely consumed, and the greater part of their apparel and outfit rendered completely unserviceable and worthless. This being the general character of these whaling and fishing adventures, it is difficult to conceive a case in which damages can be of a more speculative or contingent character than those which are claimed for the loss of the gross earnings which the owners might be expected to have realized at the termination of these long voyages, which were prematurely put an end to by the capture of the vessels. In the first place, the realization of the earnings and the estimate of their amount in this most hazardous and speculative of trades must necessarily be in the highest degree uncertain and problematical. In the second place, even if it were practicable to estimate the probable amount of these prospective earnings, a claim for that amount would be entirely illusory, unless enormous deductions were made, which again are difficult to estimate in any one particular case with any reasonable degree of certainty, such as deductions for the very considerable wear and tear of the vessels, the very great consumption of stores, and the destruction of by far the greater part of the outfit, which must necessarily have taken place before the full earnings could have been realized. It is therefore manifest that in the damages for which compensation is demanded in the claims now under consideration there exist all these elements of uncertainty, remoteness, and difficulty which would undoubtedly lead the courts, both in America and in England, to reject the claim altogether, in accordance with the principles laid down in the judgments which have been already cited or referred to.[2]

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[1] Appendix to British Case, vol. vii, p. 11.

[2] The English case of the Columbus, 2 W. Robinson, 158; the American cases of the Lively, 1 Gallison, 315; the Amiable Nancy, 3 Wheaton, 346; the Amistad de Rues, 5 Wheaton, 345.

The mode, moreover, in which this claim for prospective earnings had been preferred leaves one without the slightest data for estimating in any one individual case the compensation which could, with any propriety, be claimed for these contingent profits. The total claim in respect of the whaling and fishing vessels amounts to about $8,500,000, about half of which is demanded for the loss of prospective earnings, without any deduction whatever. The claim is, therefore, from the very nature of the case, for reasons already stated, perfectly illusory, and we are scarcely surprised to find that this enormous claim for prospective earnings, which is really double the value ascribed by the claimants themselves to the ships and outfits, can be proved, as will be shown hereafter, to be equivalent to claiming, over and above the whole capital invested in those speculative adventures, a profit on such capital at a rate exceeding 300 per cent. per annum.[1]

On the fourth head it is observed:

The American insurance companies, who have paid the owners as for a total loss, are, in our opinion, entitled to be subrogated to the rights of the latter, according to the well-known principle that an underwriter who has paid as for a total loss acquires the rights of the assured in respect of the subject-matter of insurance. This principle was explained and acted on in the well-known English cases of Randall *vs.* Cochran, 1 Ves. Sen., 98, and the Quebec Fire Insurance Company *vs.* Saint Louis, 7 Moore, P. C., 286, and is well recognized by the courts of America. On the other hand, it is equally clear that the underwriters cannot be entitled to anything more than the assured themselves; for the claim of the former is founded on nothing else than their title to be subrogated to the rights which the latter possessed, and which, therefore, cannot possibly be more extensive than the claim which the latter would be entitled to maintain. From these considerations two consequences follow: In the first place, where the claimant is the insurance company and not the owner, compensation cannot be due for any sum exceeding the amount of the actual loss sustained by the owner, however much that sum may fall short of the amount paid by the company by reason of the property having been over-insured. In the second place, wherever the owner puts forward a claim for his loss at the same time that the insurance company also claims the money paid by them in respect of the same loss, such a double claim must at once be absolutely rejected, since to allow it would be in effect to sanction the payment of the loss twice over.[2]

This double claim is, however, made in a great number of cases. Thus, as to the whaling and fishing vessels, it is remarked:

[136] *The sums claimed by insurance companies in respect of the vessels we are now dealing with, as well as in respect of their secured and prospective earnings, amount to the sum of $902,832. On examining the list of claims it will be seen that there are five cases, namely, those of the Alert, page 3 of the printed list; the Covington, page 184; the Catherine, page 181; the General William, page 192; and the Gipsey, page 192, in which the owners give credit for moneys they have received from their underwriters; but we believe it will also be found that these are the only cases in which that course has been adopted. In all the other cases the owners claim from Great Britain the total value of the ships and outfits, as well as their secured and prospective earnings, without deducting any sums received by them from the insurance companies; while at the same time the insurance companies also put forward their claims to those very same sums.

It may be somewhat interesting to note the mode in which this double claim arises. The enumeration of the different items constituting a claim in respect of any one captured vessel is preceded by the statement of the total sum claimed; then in most instances the different items are set out, consisting simply of the alleged values of the property or earnings lost, and these are followed by the claims made on behalf of insurance companies for the amounts paid by them to the owners in respect of the same property and earnings. With the exception of the five memorable cases just mentioned, the total claim is always formed by adding the first class of items to the second class, without making any deduction. In many cases this is done without any comment or notice whatsoever; in others, and especially in those relating to the Shenandoah, the owners frankly state that "they claim the full value of their property, irrespective of the partial insurance received;" or boldly "protest against any diminution of their claim by reason of insurance." It follows, therefore, for reasons which have been already explained, that the sum of $774,183 obtained by deducting from the total amount of insurances the sum of $128,649, being the amount of the insurances in the five exceptional cases, represents losses which are, in effect, claimed twice over;

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[1] Appendix to British Case, vol. vii, p. 7.

[2] Ibid., p. 5.

and this simple consideration enables us, without hesitation or difficulty, to strike off *uno ictu* this sum of $774,183, or all but 10 per cent. of the total claim.[1]

As to claims for masters' wages, the report observes:

> A claim for loss of wages by the master has, we believe, never been allowed in the English or American courts in cases of collision or capture, or other similar cases. In the second place, if such a claim were not inadmissible, it would be necessary to take into account the fact that the master probably obtained other employment, and thereby earned other wages after the capture of his vessel, as well as the fact that when he contracted with his owners the risk of the vessel being captured was probably taken into account in fixing the wages. Finally, it must be observed that the claim of the master for loss of wages when advanced at the same time, as it invariably is in the present case, with a claim by the ship-owner for full freight, is not less unjust than the claim by the owner for the amount of his loss when followed immediately by the claim of the insurance company for the very same amount; for it is out of the gross freight that the wages would have been paid, and without such payment the gross freight could not have been earned.[2]

It must be added that the claims for personal effects appear in many instances to be plainly exorbitant, and that claims are also made for personal losses of a remote and indirect kind, such as would never be allowed in the courts of any country. Thus heavy damages are claimed by one man for the loss of a valuable situation, and by another for the loss of an appointment as consul, which he alleges himself to have sustained by detention on board the captured vessel.

The general result of this examination as to the private losses is to reduce the estimated amount of the claims on account of the Alabama from $6,537,611 to $3,288,851; of the Florida, from $3,693,302 to $2,635,568; of the Shenandoah, from $6,366,894 to $1,377,316; and the total amount claimed from $17,763,910 to $8,039,685; and this is believed to be a liberal, as it is certainly a careful, estimate.[3] Whether any part of this latter sum—and, if any, how much—might with justice be charged against Great Britain, is, as the arbitrators have been reminded, an entirely distinct question, depending on the decision of the arbitrators as to the existence and the extent of any liability on the part of Great Britain in respect of the several vessels to whose acts respectively the different constituent parts of this aggregate loss are to be ascribed.

Her Majesty's government supposes that the Government of the United States has deemed it proper to accept and present to the arbitrators the amounts at which the several private claimants have stated their own losses as sufficient for the immediate purpose of the present proceeding. But the arbitrators must be well aware that claims of this nature, put forward by private persons, cannot safely be accepted, even as furnishing materials for *prima facie* estimate, without strict scrutiny, and it is clear that this remark applies very forcibly to the claims now under consideration.

[137] *CLAIMS FOR NATIONAL LOSSES BY THE DESTRUCTION OF PUBLIC PROPERTY OF THE UNITED STATES.

Claims for national losses by the destruction of public property of the United States.

The claims for public property of the United States destroyed by confederate cruisers relate to the war-steamer Hatteras, sunk in action by the Alabama; to the barks Greenland and Whistling Wind, said to have been laden with coal, and destroyed respectively by the Florida and a confederate vessel called the Coquette; and to the steam revenue-cutter Caleb

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[1] Appendix to British Case, vol. vii, p. 16.

[2] Ibid., p. 13.

[3] Ibid., p. 36.

Cushing, cut out and destroyed by the Archer, which is alleged to have been acting as a tender to the Florida.

The Hatteras was detached from Commodore Bell's squadron, then blockading Galveston, to chase the Alabama, which had appeared in the offing. The destruction of this ship appears to have been clearly due to the failure of the squadron to support her; and Her Majesty's government conceives that the claim on account of her is, on this ground, inadmissible, supposing that it could be supported on other grounds.

The case of the Caleb Cushing betrays such remissness on the part of those intrusted with the charge and defense of the great fortified harbor of Portland (where this revenue-cutter lay) in allowing her to be cut out under the very guns of the fort by the boats of an armed vessel which had been a small fishing-schooner, that, even should the tribunal hold that Great Britain has incurred any liability to the United States for captures made by tenders of the Florida, this claim ought not to be entertained.

As to the Whistling Wind, it must be observed that the Coquette, by which she is said to have been captured, is not mentioned in the Case of the United States as a tender to the Florida, and there is no evidence, so far as Her Majesty's government is aware, that she was such.

CLAIMS FOR EXPENDITURE ALLEGED TO HAVE BEEN INCURRED IN THE PURSUIT OF CONFEDERATE CRUISERS.

Claims for expenditure alleged to have been incurred in the pursuit of confederate cruisers.

In the second of the two reports above referred to, (that from the committee appointed by the board of admiralty,) the arbitrators will find an examination of the claims presented on this account. It is obviously impossible, without any materials whatever for verification or comparison, to ascertain whether the several items for coal, outfit, expenses of navigation, and the like, do or do not correctly represent the actual expenditure under these various heads. Her Majesty's government deems it necessary to point out that these accounts contain many obvious errors,[1] many discrepancies, which there are no means of reconciling, and a great number of charges which, in the absence of explanation, cannot but be deemed excessive.[2]

It must be further observed, however, that these claims for expenditure include not only vessels stated to have been employed in seeking for the several cruisers specified in the United States Case, including the Sumter and the Tallahassee, (which were fitted out in confederate ports,) but also others dispatched after the Rappahannock, (which is not among the specified vessels, and on account of which the case makes no claim,) and the Chesapeake, (which is not even mentioned in the Case,) and others again, which were employed in the general duties incidental to a state of war, such as convoy, the protection of fisheries, intercepting blockade-runners and ships laden with contraband of war, and cruising in search of enemy's privateers generally. Sailing orders, in which this general description is employed, cannot be treated as having reference to any of the specified vessels; and in several instances the dates conclusively prove that there could have been no such reference. Again, the claim for expenditure in respect of a United States cruiser dispatched in pursuit of a particular confederate ship is sometimes prolonged considerably beyond the date when the capture or destruction of that ship must have become known to the commander of the cruiser, and during a time, therefore, when he must have been employed on other service. There are cases again (such as that of the De Soto[1]) in which it is clear that a cruiser alleged to have been in [138] quest of a confederate ship must *have much more than paid her expenses by the prizes made by her while nominally employed on that errand.

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[1] For example, the whole amount of the Sheppard Knapp's outfit is charged, although in the official account of her loss in the report of the Secretary of the United States Navy to Congress of the 7th December, 1863, p. 556, it is stated that "her battery (11 guns) and appointments, ordnance, yeoman's and master's stores, instruments and charts, provisions and clothing, spars, sails, running and standing rigging, anchors and chains, everything portable and of value to the Government, has been saved. The only loss is the hull and the use of the ship."—(Appendix to British Case, vol. vii, p. 90.)

[2] For example, the charges under the head of medicine and surgery amount to $28,664.24. The medical director-general of Her Majesty's navy states that £2,500 would probably cover the charge for medicines and medical stores for 7,600 men for 303 days in Her Majesty's navy. And this appears to have been the total of the complements of the United States cruisers.—(Ibid., p. 93.)

*The result of a careful and, as Her Majesty's government believe, a fair and just examination of these claims, upon the data presented by the United States themselves, is that, even were it possible to hold Great Britain liable for all expenditure incurred in the "pursuit" of all the confederate vessels specified in the United States case, the amount could not exceed $1,854,715.99; were the expenditure limited to the Florida, Alabama, Georgia, and Shenandoah, it could not exceed $1,509,300.74; were it limited to the Alabama, it could not exceed $1,427,685.03; and these figures would require considerable abatement. The amount claimed by the United States on this score is $7,080,478.70.[2]

It is needless to remind the arbitrators that claims of this nature are subject to the same observation as has been made with respect to the claims for private losses. It would be plainly unreasonable to contend that, if any failure of duty could be established against Great Britain in respect of a given vessel, all that may have been expended by the United States in trying to capture her must be assumed to be chargeable against this country. But the British government takes exception to this class of claims altogether. It cannot be admitted that they are properly to be taken into account by the arbitrators, or that Great Britain can fairly be charged at once with the losses which a belligerent cruiser has inflicted during her whole career, and with what the United States may think fit to allege that they spent in vainly endeavoring to capture that cruiser. Such demands are unheard of, and were never before suggested, even in those cases in which the attempt has been made to obtain compensation for actual losses. By what test, it may reasonably be asked, would it be possible to try the propriety of such an alleged expenditure? How are the arbitrators to judge whether the ships said to have been employed were properly selected for the purpose, sent to the proper places, and furnished with proper instructions, and whether those instructions were executed with activity and judgment? On these things, however, among others, the propriety of the expenditure depends. In truth, there is but one test possible; it is that of success within a reasonable time. Tried by this test, the claim must fail, even if it were open to no other objections.

Her Majesty's government is naturally reluctant to criticise the management of the United States Navy, and desires to say as little as possible on this point. But a few brief remarks on it are made necessary by the claims of the United States, and it is difficult to resist the conviction that, if well-appointed vessels of competent speed and strength had been dispatched in the directions which knowledge and experience would indicate, and if favorable opportunities had not been lost or thrown away, the list of captures by confederate cruisers would have been comparatively small.

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[1] Appendix to British Case, vol. vii, p. 74.
[2] Ibid., vol. vii, pp. 63, 111.

Let us take, as the earliest example, the escape of the Sumter from the Mississippi. This is described by the Secretary of the Navy in his report to Congress, dated the 1st December, 1861, p. 8:

> Such of these (the confederate) cruisers as eluded the blockade and capture were soon wrecked, beached, or sunk, with the exception of one, the steamer Sumter, which, by some fatality, was permitted to pass the Brooklyn, then blockading one of the passes of the Mississippi, and, after a brief and feeble chase by the latter, was allowed to proceed on her piratical voyage. An investigation of this whole occurrence was ordered by the Department.

With regard to the Alabama, it has been seen that the Tuscarora, being in the United Kingdom at the time the former surreptitiously left Liverpool, failed to follow and intercept her. This appeared to the United States minister in London to show a want of that promptitude and judgment which ought to have been evinced under the circumstances, and he evidently believed it probable that the Tuscarora would have succeeded in intercepting her, had the needful activity and dispatch been used.

Again, she was blockaded in the harbor of Port Royal, Martinique, on the 19th November, 1862, and although private signals from a ship in the harbor were made to the United States steamer San Jacinto, then off the entrance, the Alabama, on the same evening, escaped the vigilance of the San Jacinto.

Again, she was off Galveston on the 11th January, 1863, and was seen by the ships of Commodore Bell's squadron; and the flashes of the guns, while the engagement between her and the United States ship of war Hatteras was taking place, were plainly visible, and the sound of the guns heard. At 7.30 p. m. the Brooklyn, the commodore's flag-ship, went in pursuit, steering S. ¼ E. in the direction of the flashes. [139] The Sciota was *sent out S. S. E. and the Cayuga S. S. W., but these vessels failed even to see the Alabama. The commodore, in his official dispatch of the 12th January, 1863, (p. 319 of the United States Secretary of the Navy's report to Congress,) states that "three or four vessels like the Oneida thrown into the Yucatan Channel *immediately* would probably intercept him. The gun-boats are not a match for him in force or speed." Had, therefore, the Brooklyn and her consorts followed up the pursuit until the following morning, it is probable the Alabama would have been in sight, and, if so, she might have been captured. Captain Semmes, in his account of his voyage, makes the following observation: "By their account of the course steered, they could not have failed to have seen us."

Again, the Secretary of the Navy, in his report to Congress, dated 7th December, 1863, p. 23, pronounces the following censure on the improper employment of the Vanderbilt:

> In derogation of these special and explicit orders, Acting Rear-Admiral Wilkes, on falling in with the Vanderbilt, transferred his flag to that vessel, and, attaching her to his squadron, detained her in his possession so long as to defeat the object and purpose of the Department. He did not release her until the 13th June, when Commander Baldwin proceeded to carry out his instructions, but he was too late. He arrived at Fernando Noronha on the 4th of July, at Pernambuco on the 6th, at Rio de Janeiro on the 14th; thence he proceeded, on the 2d August, to St. Helena, *instead of going direct to the Cape of Good Hope*. The unfortunate detention of the Vanderbilt wholly defeated the plans of the Department for the capture of the Alabama, Florida, and Georgia. They, as the Department anticipated, arrived in those latitudes and visited those ports

in May, but the Vanderbilt, instead of being there to receive them, as the Department intended, was improperly detained in the West Indies until after that period.

The Florida, after having been seized and tried at the admiralty court of Nassau and subsequently released, proceeded to the Gulf of Mexico, and in the middle of the day of the 4th September, 1862, boldly passed through the blockading squadron off Mobile, and ran safely into the harbor.[1]

For this act of remissness on the part of the commanding officer of the United States blockading squadron he was dismissed from the United States Navy. She remained specially blockaded until January, 1863, when she again succeeded in running through the blockading squadron. She passed close to several of the ships, but was not stopped; and one of the fastest, which was specially charged with the duty of watching and following her, is stated never even to have slipped anchor in chase. Under such circumstances, when on two separate occasions she might have been captured, (either on the 4th September, 1862, or 15th January, 1863,) but escaped unscathed by the ships of war specially blockading her from ingress as well as egress, Her Majesty's government is unable to understand on what principle any claim can be sustained for losses occasioned by this ship, which up to this date (the 15th January, 1863) had not captured a single vessel of the United States, still less for the expenses incurred in failing to capture her.

In the course of her subsequent proceedings the Florida arrived at Brest on the 23d of August, 1863; remained there refitting and repairing until February, 1864, during which period she was taken into a government dock, and made considerable changes in her crew. On the 17th of September the United States ship of war Kearsarge arrived in Brest Roads, and remained at anchor with her fires banked until the 30th October. She again returned on the 27th November, on the 11th and 27th December, and the 3d January, 1864, no doubt with the express object of watching the Florida, which was at anchor in the roadstead, nearly, if not quite ready for sea; and the confederate cruiser eventually sailed from Brest in charge of a pilot on the evening of the 9th February. The Kearsarge, however, had disappeared from the coast, and had not been seen since the evening of the 3d of January; but she again returned on the 18th February, when, as it was to be expected, the Florida had disappeared from the anchorage.

Her Majesty's government have been unable to discover that any ships of war of the United States were ever specially sent in pursuit of the Georgia or Shenandoah; although in the remarks of the Secretary of the United States Navy in his report to Congress, above quoted, the Georgia is named with the Alabama and Florida. Those three vessels were, it appears, known to the United States Naval Department to be somewhere on the equator or on the coast of Brazil; and there, had a flying squadron been at once sent in pursuit, one or more of them, if not all, would probably have been captured. It is to be remarked that, during the whole time the Alabama was at sea, she was only met on two occasions by ships of the United States Navy, until she voluntarily engaged and was sunk by the Kearsarge, off Cherbourg, on the [140] 19th June, 1864. On the first *occasion she escaped from Port Royal, Martinique, when virtually blockaded by the San Jacinto in November, 1862; on the second, she engaged and sunk the Hatteras, off Galveston, on the 11th January, 1863. Nor does it appear that either the Georgia or Shenandoah, during their respective cruises, ever fell in with a ship of war of the United States.

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[1] Appendix to the Case of the United States, vol. vi, p. 332.

Her Majesty's government cannot but observe that, among the United States ships for which claims are made, as having been employed in the pursuit of confederate cruisers, there are several which would have been worse than useless for such a purpose. If the Onward, of 874 tons, or Ino, of 895 tons, converted merchant-vessels without steam-power, which are represented as having been sent in search of the Alabama, had fallen in with that ship, they must inevitably have been destroyed. The same observation applies to other sailing-vessels of the same class, such as the Gemsbok, National Guard, and Sheppard Knapp, and still more strongly to the George Mangham, a mortar (sailing) schooner of 274 tons.[1]

With the large naval force at the disposal of the Government of the United States, Her Majesty's government cannot forbear to observe that it appears extraordinary that more energy was not displayed in pursuing and following up the few small confederate cruisers to which the claims against Great Britain relate. The losses now complained of would have been reduced to a minimum had effective measures been used to protect the commerce of the United States by the establishment of one or more flying squadrons, with orders to follow them anywhere and everywhere, and not confined, as Admiral Wilkes's flying squadron was, to a very restricted station.

It is clear, indeed, from the report of the Secretary of the Navy, quoted above, that he was himself conscious that the utmost efforts of the United States were not put forth to pursue and capture these confederate vessels. This duty was deliberately held to be subordinate to that of maintaining the blockade:

> In addition to the few vessels stationed abroad to guard our national interests, others have from time to time been dispatched in pursuit of the rovers, all of which were built in and have gone abroad from foreign ports to prey upon our commerce. The details of all the measures which have been adopted by the Department in this view it is not necessary here to disclose; but with most of our naval vessels engaged in enforcing the blockade, and without a clew to guide our independent cruisers on the trackless ocean, they have thus far been unable to encounter these semi-piratical vessels, which always seek to evade a naval antagonist. Were the probabilities greater than they are, however, of encountering them, and were our public naval vessels permitted to enter the ports of the maritime powers for fuel and other supplies when in pursuit, it would not promote the interests of commerce nor the welfare of the country to relax the blockade for that object.

The foregoing observations have, it will be observed, a material bearing not only on the claims for national expenditure, but on all the claims for compensation which are advanced by the United States. It would be unjust to hold that a neutral nation is liable for losses inflicted in war, which reasonable energy and activity were not used to prevent, on the plea that the vessels which were instrumental in the infliction of the loss were procured from the neutral country, even though it may be alleged that there was some want of reasonable care on the part of the neutral government. The utmost period over which a liability once established on the ground of default could be extended on any rational principle, would be that which must elapse before the aggrieved belligerent would have, by the use of due diligence and proper means on his own part, the opportunity of counteracting the mischief.

CLAIM OF THE UNITED STATES FOR INTEREST.

On the claim for interest which is advanced by the United States, Her

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[1] Appendix to British Case, vol. vii, p. 58.

Claim of the United States for interest.

Majesty's government must observe that it is, in principle, untenable. The claims referred to the arbitrators are, it must not be forgotten, claims of the United States, not of private persons, against Great Britain, although a large proportion of them may represent losses alleged to have been sustained by private persons. Interest, on general principles recognized in the jurisprudence of all countries, and founded on reason, can be claimed only (in the absence of a specific agreement) where a debtor is *in morâ;* that is, where default has been made in payment of a liquidated debt at the time when it ought by law to have been paid, there being no *mora accipiendi*, [141] or delay interposed on the part of *the creditor. It is evident that these conditions do not apply to a case in which a mass of doubtful claims, of unascertained amount, have been made by one nation against another, have from time to time been the subject of negotiation, and are at length referred to arbitrators. It is through no fault of Her Majesty's government that these claims were not submitted to arbitration in 1867, or again in 1869; and it is not for the United States, which five years ago refused to agree to a reference, and three years ago refused to ratify a treaty actually concluded for this purpose by their representative in England, to insist on a delay, of which they were themselves the cause, as a ground for increasing their demands upon Great Britain.

RECAPITULATION OF PRECEDING REMARKS ON THE MEASURE OF COMPENSATION.

To recapitulate what has been said on this branch of the subject:

Recapitulation of preceding remarks on the measure of compensation.

The losses which may be taken into account by the arbitrators are at the utmost those only which have directly arisen from the capture or destruction, by one or more of the cruisers enumerated in the Case, of ships or property owned by the United States or by citizens of the United States, and the extent of the liability of Great Britain for any such losses cannot exceed that proportion of them which may be deemed justly attributable to some specific failure or failures of duty on the part of her government in respect of such cruiser or cruisers.

It is the duty of the arbitrators, in deciding whether claims for compensation in respect of any particular default are tenable, and on the extent, if any, of liability incurred by such default, to take into account not only the loss incurred, but the greater or less gravity of the default itself, and all the causes which may have contributed to the loss, and particularly to consider whether the alleged loss was wholly or in part due to a want of reasonable activity and care on the part of the United States themselves.

The claims for money alleged to have been expended in endeavoring to capture or destroy any confederate cruiser are not admissible together with the claims for losses inflicted by such cruiser.

The claims for interest are not admissible.

Should the tribunal award a sum in gross, this sum ought to be measured by the extent of liability which the tribunal may find to have been incurred by Great Britain on account of any failure or failures of duty proved against her.

The estimates of losses, public and private, presented by the United States are so loose and unsatisfactory, and so plainly excessive in amount, that they cannot be accepted even as furnishing a *prima facie* basis of calculation. The estimates of expenditure (were the claims on that head to be considered admissible) would likewise be found too unsatisfactory to serve a like purpose.

Her Majesty's government is sensible that, should the arbitrators find it necessary to approach this question, they will probably find it one of no inconsiderable difficulty. The foregoing considerations are intended to circumscribe it, at least, within just and reasonable limits, and, subject to these considerations, the British government leaves it to the impartial judgment of the tribunal.

In concluding this Counter Case Her Britannic Majesty's government thinks it right to advert, in a few words, to considerations which invest this controversy with an importance not, perhaps, so great as is ascribed to it in the Case of the United States, but sufficient to make it a matter of profound general interest. The discussion turns on the duties and responsibilities of neutrals; and the field of discussion embraces questions of principle, questions of fact, and questions of peculiar moment respecting the application of principles to facts. The United States have asked the sanction of the arbitrators to conceptions of neutral duty, and still more of neutral liabilities, which, to the British government, appear to be fraught with grave consequences, and to demand serious attention. These views, theoretically stated in an earlier part of the American Case, are embodied in a practical shape by the charges advanced against Great Britain; and they assume a still more formidable aspect when they are invoked to support large claims for pecuniary reparation. For the first time in history, as the British government believes, it has been seriously insisted that every act or omission, however doubtful or insignificant, on the part of a neutral government or its officers, which could be construed by a belligerent into a deviation from the line traced out for neutrals by international law and practice, may be made the foundation for pecuniary demands upon the neutral power, such as are now urged against Great Britain. If this be [142] so, it becomes a matter of the highest moment that the rules binding on neutrals should be simple and few. But what, according to the Case of the United States, must be the ordinary situation of a neutral in a maritime war? It must be a situation of perpetual and unremitting anxiety, surrounded by dangers, harassed by a crowd of new obligations unknown in peace, which nothing short of sleepless vigilance will satisfy, while any lapse in the performance of them, on the part even of a subordinate officer, is to be visited with heavy national penalties. The transactions of private commerce must be made the object of minute inquisition and incessant supervision; private persons, suspected of being agents of either belligerent, must be tracked, when within the neutral country, by spies and informers; trade with the belligerent nations must be fettered by restraints and prohibitions; the hospitalities ordinarily extended to belligerent ships in ports of the neutral must be guarded with precautions, for the strict enforcement of which no honesty or zeal on the part of the local authorities can afford an adequate guarantee. Laws and regulations enacted by the neutral nation with a view to its own protection, far from being a means of security, become an additional source of danger, when they are liable to be construed as acts by which the neutral establishes as against himself, by admission or otherwise, a new class of international obligations. Is this picture overdrawn? It can hardly be thought so, when we pass in review the various articles of the long indictment preferred by the

United States against Great Britain, and the statements and arguments which have been used in support of them.

It is evident that, if these principles were to be generally adopted, the only prudent course for neutral powers would be to enact no regulations, repeal all laws which could be interpreted as admissions against themselves, exclude all belligerent vessels of war from their ports, prohibit all traffic with belligerent nations. But even this would not be enough, since it is difficult, perhaps impossible, for maritime states, by any legislative or administrative precautions, to isolate themselves and their subjects completely from all contact with a maritime war. States, especially the less powerful, would be tempted to abandon a position so precarious, and menaced by such heavy penalties; to choose, in preference, the certain evils of war itself; and to seek protection in an alliance with one belligerent or the other.

The British government is convinced that the arbitrators will not give any sanction to views of neutral obligation, to which not even the authority of this tribunal could secure the general assent of neutral powers. Nay, the British government is persuaded that these extreme views, though, for the sake of argument, they have been insisted on in the Caseo f the United States, are not thoroughly realized, and would never, in practice, be accepted as binding by the United States themselves.

The conceptions of neutral duty which have been stated to the arbitrators on the part of Great Britain are those on which she has constantly acted, and is prepared to act in future, and which she believes to be upheld by reason, by authority, and by the general consent of nations. It is the right of a state which remains at peace while others are at war, that its relations with foreign countries and the duties it owes to them as a member of the society of nations, should, as far as is possible, continue to subsist unaltered by discords from which it stands aloof, and wherein it has no share. Impartiality in act; the exercise of reasonable care to prevent itself from being made, even against its will, a virtual participant in the war, while claiming the advantages and immunities of peace; this is all that the neutral is bound to give, or the belligerent entitled to require. Great Britain has laid before the arbitrators, with a fullness and minuteness of detail rendered necessary by the long train of accusations she has had to meet, the acts of her government and of its officers, and every ascertained fact and circumstance which can be material to a decision; and she leaves with confidence to their judgment, and to that of the world, the question whether her obligations as a neutral were not fairly discharged toward the United States during the civil war.

Finally, Her Britannic Majesty's government desires to express its earnest hope, in which it is assured that the Government of the United States will cordially share, that the frank and open statement of facts as they actually occurred, may effectually remove every misunderstanding between nations allied by innumerable ties to one another.

[143] *ANNEX (A.)

NOTE ON THE QUESTION REFERRED TO AT PAGE 12.

The subjoined citations bearing on the question referred to in page 12 are taken, as will be seen, with few exceptions, from works published before the question in controversy arose:

ANNEX (A.)

Celui-là au contraire blesse les devoirs de la neutralité qui, sans engagements antérieurs, permet à l'une des puissances belligérantes le passage ou la levée de recrues, en les défendant à l'autre, ou bien qui tolère sur son territoire les préparatifs militaires de l'une des puissances belligérantes en lui permettant d'occuper telle forteresse, en souffrant des rassemblements militaires, des armements en course, &c.; et c'est en vain qu'il se parerait du prétexte d'être prêt à en faire autant en faveur de la partie adverse.—(*Martens*, *Précis du droit des gens moderne de l'Europe*, Vergé's edition, 1858, book viii, chap. vii.)

El armar buques para el servicio de la guerra, aumentar sus fuerzas, aderezarlos, preparar expediciones hostiles, son actos ilegitimos en territorio neutral, y las capturas subsiguientes á ellos se miran como viciosas en el foro de la potencia neutral ofendida, que tiene derecho para restituir la presa á los primitivos propietarios, si á sus puertos fuere conducida. * * * Nada se opone á que los beligerantes apresten naves de comercio en los puertos neutrales, las tripulen y surtan de todo lo necesario; lo cual se extiende á las naves que pueden destinarse indistintamente al comercio ó á la guerra.—(*Pando*, *Elementos del derecho internacional*, § 192, Madrid, 1852.)

Nach der dritten Regel des vorigen Paragraphen darf der neutrale Staat einer kriegführenden Partei weder Mannschaften noch auch Schiffe für ihre Kriegsunternehmungen zur Disposition stellen, auch keine Waffenplätze oder Schiffsstationen für feindliche Unternehmungen einräumen, noch endlich Geldmittel zum Fortbetriebe des Krieges zufliessen lassen. Für erlaubt hielt man ehedem zwar die Vermiethung und gewissermassen Seelenverkäuferei von Truppen an einen kriegführenden Theil, selbst ohne einen dem Kriege vorausgegangenen Vertrag; theils machen jedoch die constitutionellen Rechte der Völker dergleichen heut zu Tage unmöglich; theils wird auch, wenn es noch vorkäme, eine Kriegspartei durch kein Herkommen gehindert, einen solchen Truppenlieferanten nach ihrem politischen Interesse zu behandeln. Eben so war es eine vormals sehr gewöhnliche Meinung, ein neutraler Staat dürfe einer kriegführenden Macht gestatten, sein Gebiet für ihr Angriffs- und Vertheidigungssystem zum Schaden des Gegners vorübergehend zu benutzen, falls man diesem selbst auch das Nämliche zu erlauben bereit wäre, z. B. einen Durchzug von Truppen oder die Durchführung von Schiffen durch das neutrale Wassergebiet, ferner die Anhäufung von Magazinen, Ausrüstung von Truppen, Kriegsschiffen und Capern; allein es lassen sich dergleichen Vergünstigungen mit dem Wesen strenger Neutralität nicht vereinbaren. Denn es wird darin immer ein actueller Gewinn für den Begünstigten in seinen Unternehmungen liegen, und die Umstände werden selten so geartet sein, dass aus solchen Gestattungen kein wirkliches Präjudiz für die andere Partei entstehen könnte; meistens wird die Lage eines neutralen Landes für die eine Kriegspartei günstiger sein als für die andere, demnach ihre Benutzung von Seiten der einen wirkliche Förderung ihrer feindlichen Zwecke gegen die andere Partei. Nur bei völliger Unverfänglichkeit der Verhältnisse und Zustände würde daher der Neutrale Zugeständnisse der angegebenen Art machen dürfen; unter allen Umständen aber fordert es der gute Glaube und die Klugheit, sich mit dem anderen Theile hierüber zu verständigen. * * *

Durch das Vorstehende sind mit Berücksichtigung der wichtigsten Fälle die engsten Grenzen gezogen, innerhalb deren sich die Unparteilichkeit der neutralen Staatsgewalten halten muss. Was nun diese zu thun nicht berechtigt sind, darf im Allgemeinen auch ihren Unterthanen nicht gestattet werden. Inzwischen kann dadurch die Freiheit der Einzelnen nicht so völlig beschränkt werden, als es für die Staatsgewalt selbst, mithin auch für die Masse der Nation, Gesetz der Neutralität ist. Es kann daher keine Regierung, den Fall ausdrücklicher Vertragsverbindlichkeit ausgenommen, dafür verantwortlich gemacht werden, wenn einzelne ihrer Unterthanen freiwillig in der einen oder anderen Weise an einem fremden Kriege Theil nehmen, wenn sie sich mit

> einer Kriegspartei in Lieferungs- und Darlehngeschäfte einlassen, oder in die Truppenreihen derselben eintreten, einem kriegerischen Drange oder besonderen moralischen Interessen an der Sache dieser Partei nachgehend. Im äussersten Falle würden hier nur die Grundsätze von der Auswanderung der Unterthanen zur Anwendung kommen. Sollte freilich die Theilnahme der Unterthanen eine massenhafte werden, dadurch die Aufmerksamkeit und Bedenklichkeit der Gegenpartei erregen, demnach Repressalien derselben befürchten lassen: so wird es von dem politischen Ermessen der betheiligten Staatsgewalt abhängen, ob und wie weit sie dagegen einschreiten wolle, jedoch nicht aus Pflicht gegen den kriegführenden Theil, sondern
> [144] lediglich aus *Rücksicht auf das eigene Staatswohl. Als Verletzung der Neutralitätspflicht darf nach neuerem Brauch die Erlaubniss zur Annahme von Caperbriefen und Ausrüstung von Caperschiffen angesehen werden.—(*Heffter: Das europäische Völkerrecht der Gegenwart*, §§ 147, 148, 3d edition, Berlin, 1855.)

The foregoing passages relate to hostile expeditions organized within and dispatched from the neutral country. Heffter, where he speaks of the act of furnishing vessels constructed for war to a belligerent, introduces it under the head of contraband:

> Da sich neutrale Staaten und deren Unterthanen durch unmittelbare Gewährung einer Kriegshilfe für den einen Theil gegen den anderen einer Verletzung der Neutralität schuldig machen, so ist letzterer unstreitig berechtigt, auf offenem Kriegsfelde dagegen einzuschreiten und die unbefugten Handlungen als feindselige zu ahnden. Hierunter fällt mit Beistimmung der Praxis:
>
> *a.* Die freiwillige Zuführung von Mannschaften für den Land- und Seekrieg;
> *b.* Die freiwillige Zuführung von Kriegs- und Transportschiffen;
> *c.* Die freiwillige Beförderung von Depeschen an oder für einen Kriegführenden.
>
> In Fällen dieser Art, wofern sie wirklich constatirt werden, wird nicht allein die Wegnahme, sondern auch die Aneignung des Transportmittels, ja sogar der übrigen Ladung gegen den von dem verbotenen Zwecke der Reise unterrichteten neutralen Eigenthümer zulässig gehalten, obwohl nicht immer mit gleicher Strenge gehandhabt. In der That liegt darin eine Selbsthilfe, welcher der Neutrale unterworfen werden darf, der sich zum Complicen oder geheimen Gehilfen des Feindes gemacht hat.—(§ 157 *b.*)

The foregoing passage has been extracted in the Case of the United States (p. 196) from a French translation of Heffter's work, in which it will be observed that a change of expression is introduced. The substituted words are:

> *b. La construction* dans les ports neutres de vaisseaux de guerre ou de commerce pour le compte de l'ennemi, *dès leur sortie.*

Heffter himself, in his fifth edition, published in 1867, retains the words he had previously used, while he recasts the remainder of his paragraph, entitling it "Analoge Fälle der Kriegscontrabande," omitting the opening sentence, and merely stating that the three classes of acts specified fall under the head of contraband "improper," ("uneigentliche Kriegscontrabande.")

Heffter here couples the act of furnishing a vessel of war to a belligerent with that of furnishing him with a transport, and also with that of transporting troops for a belligerent from place to place. That these are not acts which the neutral government is under any obligation to prevent has been constantly held by the United States.

The doctrine thus enunciated by Heffter is that of all previous writers of authority.

Ships of war, exported from a neutral territory for the use of a belligerent, had always been ranked among articles contraband of war, without any indication of a difference, in the view of international law, between them and other articles of direct use in war.

In the treaty of December 21, 1661, between Charles II of England and Charles XI of Sweden, which is stated by Azuni (*Système universel*, &c., tom. ii, art. iv, § 16, page 121, note) to have "servi de règle à un grand nombre d'autres postérieures," it is provided, "Ne merces ullæ vocatæ contrabandæ, et specialiter" (inter alia) "*naves bellicæ, et præsidiariæ* hostibus suppeditandæ, devehantur ad alterius hostes sine periculo, si ab altero confæderatorum deprehendantur, quod prædæ cedant absque spe restitutionis."

In the convention of London (July 25, 1803) between Great Britain and Sweden, certain additions were made to the list of articles contraband of war enumerated in the previous convention of 1801 between Great Britain and Russia, among which additions were "ships of war."

Rutherforth, in his "Institutes," 1756, chapter xix, (on contraband of war,) wrote: "When a war is carried on by sea as well as by land, *not only ships of war which are already built*, but the materials for building or repairing of ships, will come under the notion of warlike stores."

Hübner, (an author who has been referred to in the Case of the United States as having given the best definition of neutrality,) in enumerating the "cas où les bâtiments neutres sont saisissables," ranged under this head vessels built in a neutral port to the order of a belligerent: "Quand ce sont des navires de guerre construits dans un port neutre pour le compte ou pour le service des parties belligérantes." (*Saisie des bâtiments neutres*, vol. i, chap. vi, § 5.) He classes this case with the transport of contraband and with breaches of blockade.

Martens (*Précis du droit des gens*, &c., lib. 8, chap. vii, § 318) also enumerates, among contraband articles, *ships of war.*

Galiani, (according to Azuni, vol. ii, art. v, "*De la contrebande de guerre*," § 2, page 143:)

> Après avoir exposé les différentes doctrines des publicistes, en commençant depuis Grotius jusqu'à Lampredi, sur l'indication qu'ils ont donnée des marchandises dites de contrebande, finit par dire qu'après avoir montré par les lumières du bon sens et de la raison naturelle, quelles sont les justes bornes des classes de marchandises qu'on peut compter entre celles de contrebande de guerre; il ajoute en preuve que ce sont en effet, à peu de différence près, celles déterminées par presque tous les traités de l'Europe. Il compte ensuite les genres qui, universellement et de tout temps, ont été regardés comme contrebande de guerre; il passe de là à ceux qui en ont toujours été exclus; et, enfin, sa troisième classe comprend les genres sur lesquels la question est restée indécise. Il range dans la première classe les hommes, les chevaux, les armes défensives et offensives de toute espèce, *et les vaisseaux de guerre.*

Tetens (*Considérations sur les droits réciproques*, &c., 1805, sec. 3, Nos. 3 and 4, on contraband of war) enumerates *ships of war* among articles which are, according to his classification, contraband of the first order.

Piantanida (*Della giurisprudenza maritima*, 1806–'8, tom. iii, pp. 44, 48, 62, on prizes) among lawful captures enumerates that of neutral vessels, "*if armed for war.*"

Professor Lampredi, of Pisa, has always been justly regarded with respect as a learned and impartial writer. The main argument of his work on neutral commerce, which he wrote chiefly in refutation of some criticisms of the Abbé Galiani on a former treatise, is to vindicate the general right of neutrals to carry on their trade, in time of war, in the same manner as during peace, provided they do so impartially. And he asserts this right, within the neutral territory itself, to be absolute.

[145] *In part i, chap. 3, p. 32, (Peuchet's translation, Paris, 1802,) he says:

> Lorsqu'une fois l'on a établi la seule loi que les peuples neutres doivent observer pendant la guerre, il devient inutile de demander quelles doivent être les limites du commerce qu'ils font en conséquence de leur neutralité, parce qu'on peut répondre qu'il n'en doit avoir aucune, et qu'ils peuvent le faire de la même manière qu'ils le faisaient en temps de paix, observant seulement une exacte impartialité pendant tout le temps de la guerre. *Il n'y aura donc aucune espèce de marchandises qu'ils ne puissent vendre et porter aux belligérans, et l'on ne pourra pas les empêcher de leur vendre ou louer des navires*, pourvu qu'ils ne refusent point à l'un ce qu'ils accordent à l'autre. Devant et pouvant suivre légitimement leur commerce comme en temps de paix, il ne doit y avoir aucune distinction de marchandises, d'argent, d'armes et d'autres muni-

tions de guerre; la vente et le transport de ces divers objets dans les places des belligérans doivent être permis, et ne point porter atteinte à la neutralité, pourvu qu'il n'y ait ni faveur, ni préférence, ni esprit de parti.

In chapter iv, page 46, he says:

> Si d'ailleurs l'interdiction du commerce des objets de contrebande était une loi naturelle de la neutralité, chacun voit que les peuples en paix qui font ce commerce pourraient être regardés comme ennemis, et que la guerre serait autorisée contre eux; ce qui n'est jamais arrivé et ne se fait point non plus de notre tems; preuve évidente que la violence faite à la liberté du commerce des neutres, en tems de guerre, a lieu et se tolère respectivement des deux côtés, parce que l'on en est ainsi tacitement convenu et non parce que le droit naturel le prescrit ainsi.

In chapter v, page 57, he treats the question whether neutrals may sell every kind of merchandise within the neutral territory to a belligerent, as one which no jurist anterior to Galiani had ever thought of bringing into controversy; all their discussions being confined to the *carriage* of contraband to the enemy:

> Il résulte de toutes les autorités que nous venons de rapporter, que la doctrine que nous exposons n'a été mise en doute par personne, et qu'elle a été regardée par tous les publicistes comme pacifique, et nullement contraire au devoir de la neutralité. Néanmoins l'Abbé Galiani a trouvé cette doctrine étrange et fausse; *et demandant si un navire construit et armé en guerre dans un port neutre serait réputé marchandise de contrebande si on l'y mettait en vente, il dit qu'on devrait le regarder ainsi.* Ensuite il nous attribue d'avoir les premiers établi que les neutres ne peuvent pas exporter des marchandises de contrebande à l'ennemi, mais qu'ils peuvent les vendre sur leur propre territoire à ceux qui se présentent, pourvu que ce commerce soit fait avec impartialité, et sans montrer plus de faveur à l'un qu'à l'autre des belligérans. Nous ne prétendons pas nous attribuer ce qui ne nous appartient pas. La doctrine que nous venons d'exposer, et qu'il appelle inouïe, a été suivie, au moins implicitement, par tous les auteurs que nous venons de citer, puisqu'ils ne parlent uniquement que du transport des marchandises à l'ennemi, et jamais de la vente que l'on peut en faire sur son propre territoire. Il y a plus: quelques-uns ont enseigné explicitement la même doctrine.

He then cites Wolf, and the following passage from Vattel:

> Premièrement, tout ce qu'une nation fait en usant des ses droits, et uniquement en vue de son propre bien, sans partialité, sans dessein de favoriser une puissance au préjudice d'une autre, tout cela, dis-je, ne peut, en général, être regardé comme contraire à la neutralité, et ne devient tel que dans ces occasions particulières où il ne peut avoir lieu sans faire tort à l'une des parties, qui a alors un droit particulier de s'y opposer. Disons encore, d'après les mêmes principes, que *si une nation fait commerce* d'armes, de bois de construction, *de vaisseaux*, de munitions de guerre, *je ne puis trouver mauvais qu'elle vende de tout cela à mon ennemi*, pourvu qu'elle ne se refuse pas de m'en vendre aussi à un prix raisonnable. Elle exerce son trafic sans dessein de me nuire, et en le continuant comme si je n'avais point de guerre elle ne me donne aucun juste sujet de plainte.

Pursuing the same subject, in chapter vi, page 65, Lampredi says:

> Si Galiani s'était donné la peine d'examiner ainsi attentivement la question, et de la rapprocher des principes que nous venons de développer, il se serait aisément aperçu que la difficulté qu'il élève, relativement à la vente des marchandises de contrebande, était absurde de droit et de fait, parce qu'il aurait senti que s'il est permis aux neutres, en vertu du droit naturel, de transporter aux belligérants quelque espèce de marchandise que ce soit, plus ils doivent, à bien plus forte raison, être autorisés à les vendre sur leur propre territoire.

In chapter vii, page 72, he says:

> Le caractère de contrebande ne vient donc pas aux marchandises, de l'usage qu'on peut en faire dans la guerre, mais de toute autre source. Aussi longtems qu'elles sont sur le territoire neutre, elles ne diffèrent pas des autres marchandises; elles s'y vendent et s'y achètent de la même manière et sans aucune différence. Deux circonstances font prendre à ces marchandises le caractère de contrebande: 1, qu'elles soient passées à la puissance de l'ennemi, ou à moins destinées à y passer; 2, qu'elles soient sorties du territoire neutre. Alors elles deviennent choses hostiles, *res hostiles:* elles prennent le caractère de marchandises de contrebande; et si elles sont trouvées hors de tout juridiction souveraine, comme, par exemple, si l'on les trouvait en pleine mer, elles peuvent être légitimement arrêtées et confisquées par l'ennemi, quel que soit le pavillon qui les couvre, non pas parce que ce sont des instruments ou provisions de

guerre, mais parce que ce sont des choses appartenantes à l'ennemi, ou au moins parce qu'elles sont destinées à devenir sa propriété et à accroître ses forces. D'où il résulte que le souverain qui permet sur son territoire le commerce libre de *toutes sortes d'objets* ne passe pas les droits de souveraineté, et les puissances belligérantes ne peuvent s'en plaindre ni l'accuser de donner la main à la vente des marchandises de contrebande, qui, sur son territoire, ne peuvent jamais avoir ce caractère, et ne peuvent en porter le nom que lorsqu'elles sont devenues ou destinées à devenir la propriété de l'ennemi, et sorties du territoire où elles ont été achetées.

In chapter viii, Lampredi fortifies these views by a detailed examination of numerous treaties, and of the practice of the different states of Europe; the result of which is sufficiently stated in the extract given below, from Wheaton's History of the progress of the laws of nations.

Azuni (*Système universel de principes du droit maritime de l'Europe*, 1799, 1800, Digeon's translation) on all these points agrees with [146] Lampredi. In vol. ii, chap. 1, art. 3, p. 31, he distinguishes *between "commerce actif," consisting of exports to foreign nations, and "commerce passif," consisting of internal trade with foreigners.

In chapter ii, articles 1 and 6, page 56, he says:

> Une grande partie du commerce de quelques nations européennes, telles que les Suédois, les Norvégiens et les Russes, consiste en marchandises nécessaires pour la guerre maritime, pour la construction et pour l'équipement d'une flotte; elles vendent en tems de paix, à quiconque en a besoin, du fer, du cuivre, des mâts, des bois, du goudron, de la poix, et des canons, *enfin des navires de guerre entiers.* Quelles raisons pourrait-il y avoir de priver ces nations de leur commerce et de leur manière de subsister, à l'occasion d'une guerre à laquelle ils ne prennent aucune part? Il n'y a, dans le code de la justice et de l'équité, rien en faveur d'une telle protection. Il est donc nécessaire d'établir comme maxime fondamentale de tout droit, que, les peuples neutres devant et pouvant licitement continuer le commerce qu'ils font en tems de paix, *on ne doit faire aucune distinction* de denrées, de marchandises *et de manufactures, quoique propres à la guerre*, et que, par cette raison, la vente et le transport aux parties belligérantes en sont permis, si le commerce actif et passif était établi en tems de paix, sans qu'on puisse prendre, en aucune manière, que la neutralité soit violée, pourvu que cela se fasse sans animosité, sans préférence et sans partialité.

In the same chapter, art. 3, sec. 3, p. 83, he says:

> Si le droit des gens universel permet aux neutres qui sont en possession de faire un commerce actif avec les nations belligérantes le transport impartial de quelque espèce de marchandise à une d'elles, quoiqu'elle soit du nombre de celles appelées contrebande, par le même principe de raison, la vente des mêmes marchandises sur le propre territoire doit être permise toutes les fois que la nation neutre aura fait avant la guerre un commerce passif avec la nation belligérante. Ainsi, le commerce général passif ou la vente impartiale sur le propre territoire des neutres, de marchandises, denrées, *ou manufactures, de toute espèce*, sera toujours permis, pourvu que le souverain n'ait pas fait un traité particulier avec un des belligérants dont les sujets viennent faire des achats et des provisions sur le territoire neutre, et qu'il ne se mêle pas des achats, des ventes et des autres contrats qui transmettent la propriété, qu'il n'ordonne pas qu'on remplisse les magasins de provisions de guerre, et ne fasse pas mettre ses navires à la voile pour les transporter sur le territoire du belligérant. En protégeant également le commerce de son pays, en permettant à ses sujets de continuer leur commerce de la même manière et avec la même liberté qu'avant la guerre, il ne fait qu'user de droits incontestables qui ne peuvent être limités que par des conventions spéciales, expressément ou tacitement faites.
>
> Sec. 5. Malgré la solidité de ce principe fondamental, Galiani a voulu établir une théorie absolument contraire, non seulement au principe que j'ai précédemment établi, mais encore à tous les autres principes qu'il a adoptés dans son ouvrage.
>
> Sec. 6. Après avoir enseigné avec raison que la neutralité n'est pas un état de chose nouvelle, mais la continuation d'un ancien état; après avoir ajouté que l'état de neutralité n'est et ne peut être un nouvel état dans lequel passe une souveraineté, mais une permanence et une continuation du précédent, qui est tel, parce qu'il n'est pas survenu de nouvelles causes qui l'obligent à changer, il en conclut (au grand étonnement de quiconque est dans son bon sens) que les neutres ne peuvent vendre sur leur propre territoire, comme ils le faisaient auparavant, aux sujets des nations belligérantes, des armes, des instruments et d'autres munitions de guerre. Mais si la guerre, comme il le dit, n'apporte aucun changement au premier état d'un peuple neutre, si la guerre n'anéantit pas les droits qu'il avait en tems de paix, par quelle raison, dis-je, doit-il abstenir de faire les commerce qu'il faisait avant la guerre? Par quelle raison sera-t-il

> obligé de changer son état, qui, selon, les propres principes de Galiani, ne doit, au moyen de la neutralité qu'il a adoptée, être altéré en rien? *Par quelle raison, enfin, ne pourra-t-il pas vendre, dans un port neutre, un vaisseau propre à la navigation, avec les attirails de guerre?* On n'en trouve pas d'autre dans Galiani que celle de la confusion qu'il a jetée dans ses théories, en se laissant transporter par l'esprit de parti, lorsqu'il a voulu réfuter l'opinion de Lampredi, qui soutient le contraire. C'est précisément alors que la vérité se cache dans les ténèbres de ses subtiles raisonnements et de ses ingénieux paralogismes. Il est donc nécessaire que je répète ici le principe incontestable que j'ai précédemment rapporté, qu'en suivant le droit conventionnel de l'Europe, les neutres ne peuvent porter les choses qui sont spécialement propres à la guerre, et qui y sont directement employées, mais qu'ils peuvent sans inconvénient, selon le droit universel des gens, les vendre comme marchandise sur leur propre territoire à quiconque se présente pour les acheter, puisqu'ils le font sans partialité, et sans montrer de faveur plutôt pour une partie belligérante que pour l'autre.

No European writer, before 1858, had advanced any doctrice at variance with the passages above cited from Lampredi and Azuni, except so far as Galiani had done so; and the doctrine of Galiani, as is shown in these extracts, (and in other passages of the same writers,) was not only novel, but inconsistent with itself.

In England there is no trace of a different doctrine having been held or advocated by any jurist; although the interest of England in this class of questions had been generally that of a belligerent. In 1721, on the occasion of a complaint being made by the minister of Sweden that certain ships of war had been built in England and sold to the Czar, the judges were ordered to attend the House of Lords and deliver their opinions on the question, whether the King of England had power to prohibit the building of ships of war, or of great force, for foreigners, and they answered that the King had no power to prohibit the same.—*Fortescue's Reports*, p. 388.)

Mr. Reddie, of Edinburgh, whose useful "Researches, historical and critical, in maritime international law," were published in 1844, cites with approbation the views of Lampredi and Azuni on the point in controversy between these writers and Galiani, and bestows especial praise upon the former of these jurists.

In the case of the United States, a passage is, it is true, cited from the well-known work of M. Hautefeuille, entitled "*Les droits et les devoirs des nations neutres en temps de guerre maritime*," published in 1858, in which the author affirms that the building or arming in a neutral port of a vessel of war for a belligerent is a violation of the neutral territory and of the sovereignty of the neutral, and that captures made by such a vessel are unlawful. M. Hautefeuille is a [147] writer of great ingenuity and *research, but the foundation of his work is the assumption that the settled and ascertained usage, or, as it has sometimes been called, the positive law, of nations, is to be rejected as erroneous when it appears to conflict with such conclusions as he is able to draw from *a priori* reasoning. His statements of principle are, therefore, to be received with caution, but his statements of fact are generally careful and valuable. It is apparent, however, that in the above-mentioned passage M. Hautefeuille cannot have intended to condemn the mere construction, to the order of a belligerent, of a vessel of war which is not armed or equipped for war when she leaves the neutral port, since in a subsequent part of the same work he contends that she is not even contraband of war, when sent to sea, unless armed:

> A l'égard des vaisseaux construits, la question n'a jamais été tranchée par les traités; peu d'auteurs s'en sont occupés, et ceux qui l'ont fait se sont bornés, comme Azuni, à énoncer une opinion sans entrer dans la discussion. Hübner a suivi cette marche; il déclare contrebande les vaisseaux de guerre construits dans les ports neutres, pour le compte de l'un des belligérants, et faisant route pour ses états.

> Je ne puis comprendre qu'un bâtiment, quelles que soient sa grandeur, sa forme, sa destination, soit un objet de contrebande de guerre. Le navire n'est pas propre à la guerre, préparé pour servir exclusivement aux opérations militaires, apte à être employé à ces opérations, immédiatement et sans aucun changement, sans aucune addition. Lorsqu'il est dépourvu des canons, des munitions, des armes, et des hommes qui doivent les employer, ce n'est pas une machine de guerre; c'est un véhicule plus ou moins grand, plus ou moins solide, mais ce n'est qu'un véhicule. Pour lui donner les qualités spéciales et exclusives qui déterminent le caractère de contrebande de guerre, il est nécessaire de transporter à bord des canons, des armes, des munitions, en un mot tout l'attirail du combat. C'est alors seulement que le bâtiment devient, non une machine de guerre, mais une machine portant des instruments de guerre, et susceptibles de nuire, par cette circonstance seulement, au belligérant. Mais la machine elle-même, mais le véhicule dénué de son armement, ne peut être réputé nuisible. Au reste, il faut convenir que ce commerce est peu fréquent, et la meilleure preuve que je puisse donner de l'innocuité de ce négoce est le silence du droit secondaire à son égard.

After stating that materials for ship-building and for the equipment of ships can under no circumstances be contraband of war, he concludes:

> *Les bâtiments non armés, construits dans les ports neutres et vendus aux nations engagées dans les hostilités, quelles que soient leur force, la nature de leur construction, sont également objets d'un commerce licite. Ils doivent être régis par la règle générale, qui est la liberté entière du commerce entre les nations neutres et les deux belligérants.*—(*Hautefeuille*, vol. ii, pp. 144–146.)

M. Hautefeuille, therefore, who has been cited by the United States, here goes beyond all preceding writers, and asserts with the utmost clearness that a vessel not actually armed for war is, under all circumstances, an innocent object of lawful commerce, whatever may be her size or force, or the character of her construction, and he adds that the best proof of this is that the law of nations, so far as it rests on international usage and practice, has been wholly silent on the subject.

The Government of the United States has further cited a passage from Ortolan's "*Diplomatie de la mer.*" This passage is not found in any edition of M. Ortolan's excellent work anterior to the civil war. It expresses, therefore, an opinion recently formed by the writer on a question which he evidently regards as a new one, but it is not, nor indeed does it purport to be, evidence that such an opinion had been held before, much less that it had been sanctioned by the usage and general consent of nations.

Among the jurists of the United States there are no more famous names than those of Story and Wheaton. The opinion of the former was clearly expressed in the case of the Santissima Trinidad, (7 Wheaton, p. 283,) where he said, "*There is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels*, as well as munitions of war, *to foreign ports for sale.* It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation." Wheaton, in his excellent *History of the progress of the law of nations*, (French edition, Leipsic, 1853, vol. i, p. 376,) referring to the controversy between Lampredi and Galiani, writes as follows:

> Lampredi passe maintenant à l'examen *d'une question oiseuse suscitée par Galiani*, savoir: "Si le droit des gens conventionnel, qui interdit le commerce avec l'ennemi de marchandises de contrebande, prohibe la vente de ces marchandises dans le territoire neutre." Galiani répond à cette question par l'affirmative, *et il prétend qu'un vaisseau par exemple, construit et armé pour la guerre dans un port neutre ne peut y être légalement vendu à une des parties belligérants.* Lampredi *se donne beaucoup de peines superflues* pour appuyer, par la raison et l'autorité des publicistes précédents, son opinion que le transport seul des marchandises de contrebande à l'ennemi est prohibé, mais que la vente de ces marchandises dans le territoire de l'état neutre est parfaitement légale. Il admet qu'il peut y avoir des exemples de nations neutres qui, désirant par prudence éviter des collisions avec les puissances belligérantes, auraient prohibé le commerce des objets de contrebande dans les limites de leur propre territoire; mais il affirme que, pendant la guerre de l'indépendance de l'Amérique du Nord, Venise donnait seule l'exemple d'une

telle prohibition de la part d'un état neutre. Naples prohiba seulement la construction des vaisseaux de guerre destinés à être vendus, et l'exportation des autres objets de contrebande, tandis que la Toscane permit à ses sujets de continuer leur commerce accoutumé de ces objets, dans les limites de son territoire, et par l'exportation, sauf le droit des puissances belligérantes de saisir en mer at de confisquer les objets destinés à l'usage des ennemis.

The following extract from the American Law Review of January, 1871, a periodical which deservedly possesses the highest reputation, shows in what manner this question was last year regarded by accomplished jurists in the United States, and upon what distinctions those jurists considered it necessary to rely, in order to maintain the present claims against Great Britain:

A ship, theoretically considered, may or may not be contraband. If on its way to a belligerent port for the purpose of being sold to the belligerent, it will be contraband if it is adapted or readily adaptable for warlike use; equally so, doubtless, if it be adapted for the transportation of troops, or even perhaps of military material. [148] Inasmuch, therefore, as very few vessels are not capable of being fitted * and used for one or the other of these purposes, it may be laid down generally that ships will pretty surely be condemned as contraband of war. Nor will it help the matter that a contingency may prevent the sale. Thus, where the captain had orders to sell if he could find a good purchaser, but otherwise to seek freight, the ship was condemned, (the Brutus, 5 Rob. Adm., 331, note and app.) The case of the Meteor, heard before Judge Nelson, in the United States district court, may be regarded as furnishing authority for the same doctrine.

The neutrality acts of the United States and Great Britain may possibly have the effect of clouding the popular apprehension of this subject. But the thread of an unquestioned and unquestionable principle is quite capable of being traced through all the legal argument and diplomatic controversy. With regard to ships, as with regard to all other descriptions of contraband merchandise, no restriction is placed by international law upon trade. The naked right to sell a ship of war to a belligerent is not interfered with. But a neutral port cannot be made the base of hostile operations by either belligerent against the other. It is because the right to sell a ship of war in a neutral port, or to send it from a neutral port for sale abroad, are so apt to be wrongfully magnified into the actual equipment and dispatch of a military expedition from that port, that neutrality acts have been passed. Their intent has not been to prohibit sales, but they have been obliged to hamper the right of sale with a multitude of safeguards against the activity and deceit of men who would add to the legitimate business transaction an improper and unjustifiable adjunct. The history of the neutrality legislation shows this. The first neutrality act ever known was passed by the United States. The immediate provocation was the equipment by France of privateers, which departed, manned and armed, from our ports to cruise against Great Britain. Congress, therefore, passed the neutrality act of 1794. In 1817 and 1818 this was improved at the suggestion of the Portuguese minister, to meet the necessities arising out of the war then waging by Spain and Portugal with their cis-Atlantic colonies. In each of these years Congress carefully and by obvious intent reserved to American citizens the power to sell. A proposed bill took away this power, and was amended before becoming an act by the striking out of all such prohibitive language. Congress simply furnished legal machinery to the executive, whereby the stretching of the transaction of sale into the dispatch of a military expedition might be prevented. The British foreign-enlistment act, modeled upon our own legislation, aimed, by less effective language, to accomplish precisely the same end.[1]

Familiar examples of innocent and guilty transactions will occur at once to every American. Of the former, the case of the Meteor is recent and prominent. The libel averred that she was to be sold to Chili, then at war with Spain, with both of which nations we were at peace. Judge Nelson maintained the right of the owners to sell the ship, as she lay at the wharf, unprepared for military service, neither manned nor armed, and having no covert arrangements made for the procuring of either men or arms. Even the Government counsel acknowledged that, in order to condemn the vessel, it would be necessary directly to overrule the whole course of American jurisprudence on the subject. The right of sale, *bona fide*, to a belligerent, unaccompanied by extraneous illicit circumstances, has been upheld by our courts as clearly and consistently as by our legislature. (The Mermaid, Bee, Adm., 69; Moodie *v.* The Alfred, 3 Dall., 307, which is probably the same case under a different name. The Santissima Trinidad, 7 Wheat., 283, a famous and leading case. Also the United States *v.* Quincy, 6 Pet., 445.) The instance of the guilty transactions which will at once occur to all is that of the Anglo-rebel cruisers. It was not because the Messrs. Laird sold a war-ship to the confederates that we have a claim against England for a breach of international law. But it was because collateral arrangements for completing the equipment and armament of the ship so sold, by placing on board officers and crew, guns and provisions, rendered the entire procedure, in fact, the inception of a hostile undertaking from the confines of a neutral country. It is needless to elaborate further a matter which is in a measure digressive. It may be declared as indubitable that the pure unalloyed bargain and sale of a ship, even a ship of war, to a belligerent is legal by the rules of international law; that such a ship is, however, contraband of war, and if captured after sale on her way toward delivery, or before sale on her way toward a market where she is intended to be sold to a belligerent, she will be properly condemned. Neutrality acts have not been intended to change this state of the law, but only to furnish sufficient means for preventing its abuse. Our original proposition that the doctrine of contraband of war does not operate as a restriction upon trade, upon dealings which are purely commercial, remains correct, even in this matter of war-vessels. The neutral is not called upon actively to interfere with commerce, but he is called upon actively to prevent the use of his territory as the base of hostile operations.—*American Law Review*, vol. v, p. 371.

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[1] It will be seen from the examination in Annex B that the provisions of the British foreign-enlistment act were, on the contrary, more effective than those of the American.

It was not sufficient, according to this view of the law, that the Alabama was a vessel adapted for war, nor that there was reason to believe that she was intended for the Confederate States. These facts alone would not make it the duty of the British government to prevent her departure. That duty would not arise until there was reasonable ground to believe that the arrangements for dispatching her included also arrangements for completing her armament by placing on board her guns and crew; in short, that what was taking place was not merely the dispatch of a ship of war constructed for belligerent use from a neutral port, but the dispatch from a neutral territory of a military expedition. And to support a charge of negligence against the government, it would be necessary to prove that the government either knew all this, or, had reasonable care been exercised, would have known it. This, however, is exactly what has not been, and cannot be, proved. The knowledge of these facts was not in the possession nor within the reach of the government.

It must be here observed that the decisions of municipal tribunals, on the construction of the municipal law of the United States or of England, are not to be cited as authorities for the construction of the law of nations.

The general conclusion to be drawn from the foregoing authorities is, as the British government believes, fairly stated above, pp. 11, 12.

[149]

*ANNEX (B.)

THE BRITISH AND AMERICAN FOREIGN-ENLISTMENT ACTS.

Annex (B.)

It is assumed throughout the United States Case that the American act of Congress of 1818 is more efficient than the British act of Parliament of 1819, and a contrast is attempted to be drawn, to the disadvantage of the British law, between the provisions of the former, as epitomized in the President's proclamation of neutrality of October 8, 1870, and the provisions of the latter, as explained in a summary given at page 111 of the Case.

A very cursory examination will be sufficient to show that this assumption is erroneous.

Mr. Bemis, an American counsel of acknowledged reputation, who cannot be suspected of any partiality in favor of Great Britain, points out no less than ten particulars in which the United States is inferior to the British law, as follows:[1]

Some of these points of superiority relate to warlike preparations on land (on which subject English legislation had provided, to some extent, at a much earlier date than our own) and some to preparations by sea, and some again to preparations combining both land and marine operations. Under one or the other of these heads, I can name at least ten important points of superiority in the British statute over our own.

1. *In the first place*, the British act is decidedly more comprehensive than the American, in denouncing unneutral enlistments, both in the land and naval service of a foreign government, by making it penal "*to agree* to enlist," or "to *engage or contract* to enlist," or to "*engage*" or "*attempt to engage another person to enlist*," neither of which initiatory steps of raising foreign levies is forbidden by our statute. Our act (section 2) only punishes one who "enlists or enters himself, or hires or retains another person to enlist," &c., thus making a positive and complete enrollment or hiring on neutral soil a prerequisite to the offense.

The importance of this distinction will be appreciated when it is remembered that not a Fenian recruit nor a Fenian recruiter has been prosecuted for violating American laws *by recruiting on American soil* during the late Fenian demonstration in the United States, though the *engaging* to enlist, or *the attempting to engage* others to enlist, have probably been as open as the day in all the northern cities.

2. *In the second place*, the British act is more complete than our own, in prohibiting any hiring or retaining of *any person whatsoever*, by way of recruiting, for foreign war-ships transiently sojourning in British neutral waters, without excepting the subjects or citizens *of the same nation as that to which such war-ships belong*, as the American statute does, in section 2. The effect of the American exception is, that if the United States happens to be a neutral power, and England and France, for instance, are belligerents toward each other, England can lawfully recruit from among British subjects for her ships of war, transiently stopping in American ports; and France, in like manner, from French subjects under like circumstances.

3. On the other hand, *in the third place*, the superiority of the British act over the American is decided, in forbidding British subjects from enlisting or engaging in warlike operations *anywhere whatsoever*; while the prohibition of the United States law is limited to "any person *within the territory or jurisdiction of the United States*," (except in reference to fitting out ships abroad to prey upon American commerce, as already noticed in the criticism on the revision of the act of 1797, and which exception, as by section 4 of the act of 1818, is altogether abrogated in General Banks's new scheme.) It would seem thus that citizens of the United States, under the laws of the United States as they now stand, may freely go abroad to enlist in a foreign service—in fact, may at home, on American soil, agree to enlist in such service, (provided they do not take money and "*enter themselves*,") without committing any offense against United States laws, (see United States *vs.* Kazinski;) but that both these descriptions of belligerent undertakings are denounced by the British statute.

4. *In the fourth place*, the British act is greatly superior to our own as a preventive of infractions of neutrality, in authorizing (as by section 5) the detention of any vessel about leaving the British dominions with persons on board "who have enlisted or engaged to enlist," &c., in any foreign belligerent service; thus authorizing the stopping of any warlike embarkation for foreign parts, which our laws, as they now stand, do not, unless the number of persons thus collectively embarking brings it under another head, of "setting on foot a military expedition." Section 6 of the British act follows up this preventive provision, by making it penal for any ship-master to take on board his ship any such recruits, "enlisted or engage to enlist," in a foreign bel-
[150] ligerent service, under a penalty of £50 per *head for each passenger. It further subjects the ship itself to seizure and detention, until the fine incurred as above is paid, or satisfactory security given for its payment.

These provisions are entirely new in the British act, and find no exemplar in our own statutes.

5. *In the fifth place*, (to come to the head of fitting out ships, and maritime neutrality purely,) the British foreign-enlistment act, as a neutral measure, has a clear superiority over our own in forbidding the fitting out, &c., of any "*transport or storeship*" for belligerent use—a prohibition never contained in the American statute, and which would have materially narrowed the right of engaging in the carrying trade of European wars, (whether by chartering or selling vessels to the belligerents,) which our Government so strenuously contended for at the period of the Crimean war, under the administration of President Pierce.

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[1] American Neutrality; its Honorable Past; its Expedient Future. By George Bemis. Boston, 1866: pp. 65–81.

6. *In the sixth place*, the British statute contains those much-belabored words, "equip. furnish, fit out, *or* arm;" while our own only denounces "the fitting out *and* arming" a ship of war for belligerent uses—a distinction between "*or*" and "*and*" which saved us from having Laird's iron-clads let loose against us in September, 1863.

7. *Seventhly*, the British foreign-enlistment act is more comprehensive than our own, in using after the clause "equip," &c., "or attempt to equip," &c., the phraseology "with intent, *or in order*, that such ship be employed," &c. Our statute stops short "*with intent*," while the British, by adding "*in order that*," helps to simplify a troublesome question of whose the intent must be—whether the equipper's or the belligerent state's for whose use the vessel is equipping.

8. *Eighthly*, the British statute has a wider scope than the American, and so seems more effectively neutral, in using after the words "colony, province," &c., the terms, "*or of any person exercising, or assuming to exercise, any powers of government*," &c. The government of Jefferson Davis and his associates, for example, both in the Alexandra and the Pampero proceedings, was set forth under these terms of the foreign-enlistment act.

9. *Ninthly*, that the British statute is more sweeping and more thoroughly neutral than our own, in enacting various prohibitions against augmenting the armament of foreign ships of war which come into port already armed, but which have occasion to refit or add to their warlike equipment. By the British act (section 8) no foreign ship of war *at all*, whether belonging to a power *at peace* or at war, is allowed to add to or vary its warlike armament in a British port; while, by our own statute, (section 5,) the modified prohibition against adding to the armament of such a ship of war is only leveled against a ship of a *belligerent* power. That is, the American statute does not pretend to interfere at all with increasing the number of guns, &c., of a foreign ship of war at a time when the government to which the ship belongs *is at peace*, but only prohibits such augmentation when the ship is *the representative of a belligerent power*. The British act, on the other hand, directs its prohibition equally against such warlike equipment in time of peace as well as in time of war.[1]

10. *In the tenth and last place*, the British statute is more severe in its penalties throughout than the American.

It is true that the American act contains two clauses not included in the British act of 1819, clauses 10 and 11, commonly known as the "bonding clauses."[2] With regard to these, Mr. Bemis remarks:

> To my own appreciation both of these "bonding" clauses, as they are called, had most of their neutral virtue taken out of them when Congress made them applicable—(1.) To "vessels belonging wholly or in part to *citizens of the United States*," thereby leaving *foreigners* at liberty to clear unneutrally armed ships, (see project of the act, Ann. Con., 1816–'17, p. 477, sec. 1;) (2.) When they limited the bond so as only to prevent "*such owners*" from cruising or committing hostilities, instead of making the bond guard against belligerent employment of the vessel by "*any person to whom they* (such owners) *may sell or pretend to sell such vessel*." (Ann. Cong., 1816–'17, p. 478, sec. 2;) and (3) by requiring that any vessel, to be subject to detention, must have on board "*a cargo principally consisting of arms and munitions of war*," thus letting go at large a vessel armed to the "teeth," and "manifestly built for warlike purposes," provided she adopts the precaution of taking *no such cargo* with her, and is *owned by foreigners*.

Great stress is laid in the Case of the United States on the eighth section of the act of Congress. "The tribunal of arbitration will also observe," it states, "that the most important section of the American act is omitted in the British act, namely, *the power conferred by the eighth section on the Executive to take possession of and detain a ship without judicial process and to use the military and naval forces of the Government, if necessary*." This implies that the Executive is empowered to detain any ship; but on turning to the act itself it will be seen that this is by no means the case. The eighth section provides that "in every case in which a vessel shall be fitted out *and armed*, or attempted to be fitted out *and armed*, or in which the force of any vessel of war, cruiser, or other *armed* vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this act, and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other *armed* vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, in every case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring [151] the prize or prizes in the cases in which *restoration shall have been adjudged, and also for the purpose of preventing the carrying on any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace."

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[1] It may be doubted whether the interpretation placed by Mr. Bemis on the British statute of 1819, under this ninth "head," is correct. In all other respects his observations are accurate and well founded.

[2] For the acts, see Appendix, vol. iii, pp. 29–41.

Neither the Alabama nor Florida, nor any of the other vessels complained of, was fitted out and armed, or attempted to be fitted out and armed, within British jurisdiction; and, if there had been a similar provision in the British act of Parliament, it would not, therefore, have been applicable. The section, which is taken from the act of 1794, (section 7,) was evidently intended to enable the President to repress the arming of French privateers in American ports and their violations of neutrality in American waters, and did not contemplate any interference with *unarmed* vessels except for the purpose of restoring prizes brought into the ports of the United States after having been captured within their jurisdiction.

The American law was indeed purposely restricted in its operation. When the act of 1817 was introduced into Congress it was entitled "A bill to prevent citizens of the United States from selling vessels of war to the citizens or subjects of any foreign power, and more effectually to prevent the arming and equipping vessels of war in the ports of the United States, intended to be used against nations in amity with the United States," and the first section would have prohibited the fitting out and arming by American citizens of "any private ship or vessel of war, to sell the said vessel, or contract for the sale of the said vessel to be delivered in the United States, or elsewhere, to the purchaser," with intent to cruise, &c.; but this section was struck out by the Senate, and the title of the bill changed. The act, as it was passed, contained no such prohibition.

Notwithstanding the fact that the British act of 1819 is of greater stringency than the American act, Lord Russell was willing, during the civil war, to consider what amendments could be introduced into it if the United States Government had given any encouragement to a suggestion he made for a joint revision of the two laws.

On the 20th of November, 1862, Mr. Adams solicited "a more effective prevention of any repetition" of occurrences like those of which he complained.[1] Lord Russell replied December 19, 1862:[2]

> As regards your demand for a more effective prevention, for the future, of the fitting out of such vessels in British ports, I have the honor to inform you that Her Majesty's government, after consultation with the law-officers of the Crown, are of opinion that certain amendments might be introduced into the foreign-enlistment act,

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[1] Appendix to United States Case, vol. iii, p. 73.

[2] Ibid., p. 92.

> which, if sanctioned by Parliament, would have the effect of giving greater power to the executive to prevent the construction, in British ports, of ships detained for the use of belligerents. But Her Majesty's government consider that, before submitting any proposals of that sort to Parliament, it would be desirable that they should previously communicate with the Government of the United States, and ascertain whether that Government is willing to make similar alterations in its own foreign-enlistment act, and that the amendments, like the original statute, should, as it were, proceed *pari passu* in both countries.
>
> I shall accordingly be ready to confer at any time with you, and to listen to any suggestions which you may have to make by which the British foreign-enlistment act and the corresponding statute of the United States may be made more efficient for their purpose.

Mr. Adams did not give any answer to this in writing, but, on the 14th of February, 1863, Lord Russell informed Lord Lyons:

> I had a conversation a few days ago with Mr. Adams on the subject of the Alabama It did not appear that his Government desired to carry on the controversy on this subject from Washington; they rather left the conduct of the argument to Mr. Adams.
>
> On a second point, however, namely, whether the law with respect to equipment of vessels for hostile purposes might be improved, Mr. Adams said that his Government were ready to listen to any propositions Her Majesty's government had to make, but they did not see how their own law on this subject could be improved.
>
> I said that the cabinet had come to a similar conclusion; so that no further proceedings need be taken at present on this subject.[1]

On the 27th of March Lord Russell told Lord Lyons that the subject had been again mentioned. "With respect to the laws itself, Mr. Adams said, either it was sufficient for the purpose of neutrality, and then let the British government enforce it; or it was insufficient, and then let the British government apply to Parliament to amend it. I said that the cabinet were of opinion that the law was sufficient; but that legal evidence could not always be procured."[2]

The revision of the British act of 1818, upon the recommendation of the neutrality laws commission, has already been noticed in Part II. An attempt was made in 1866 to revise the American act, but in a very different spirit.

On the 11th of July, 1866, a week after the Fenian raid on Canada, a resolution was passed in the House of Representatives instructing the Committee on Foreign Affairs to inquire into the expediency of reporting a bill for the repeal of the act of 1818; and, in compliance with this instruction, the committee presented a report on the 25th of July, accompanied by a bill which was accepted and passed on the following day by a unanimous vote.

The report and bill are given in the Appendix, vol. v, p. 343.

The following extracts from the report will show the views of maritime neutrality entertained by the committee, and indorsed by the House:

> The American statute is not demanded by international or natural law. According to these systems neutrality is impartiality. A state, in virtue of its sovereignty, [152] has an inherent and *indefeasible right to remain neutral as between other states at war. This neutrality implies, on one part, impartiality; on the other, inviolability. The state cannot inflict, and is not bound to suffer injury. It is a temporary condition, incident to the situation, and not necessarily permanent. An attempt to impose upon a people permanent neutrality, especially if that word is interpreted to mean, as in our legislation it does, an estrangement, abscission, and isolation of the state from other nations, is opposed to the true principles of public morality and law. To make such a system permanent is impracticable. It can be justified only by a regard to the temporary condition of states by which it is enacted. The highest interests of civilization demand that the liberties and rights of neutrals should be extended, and the

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[1] See vol. i, p. 668. The correspondence will be found also in the Appendix to the British Case, vol. iv, No. 1, p. 48.

[2] Appendix to British Case, vol. iv, No. 2, p. 2.

privileges and powers of states at war diminished. Upon the recognition of this principle depends the progress of nations, the independence of states, the liberties of the people. To restrict the rights of neutrals and enlarge the power of belligerents is to reject the teachings of Christianity and the improvements of civilization, and to return to the doctrines of uncivilized nations and the practices of barbaric peoples.

In reviewing the statute of 1818 we cannot escape the conclusion that it is founded upon an opposite and unsound philosophy; that it disregards the inalienable rights of the people of all nations; that it was imposed upon the country by considerations affecting exclusively the political interests of other nations; that it criminally restrains the rights of nations at peace for the benefit of those at war; that it was intended to perpetuate the supremacy of favored nations on the sea. It properly belongs to another age, and is not of us or for us.

It was in deference to the conditions then imposed that American legislators thought it expedient to divest this country of rights enjoyed by others, indispensable to the development of the strength of republican institutions and the American States, and to inflict upon their people the irreparable injury of depriving them of privileges necessary to their private prosperity and the preservation of the liberties of their race. It is incredible that it should have been thought necessary permanently to suppress as crimes on the part of our citizens transactions which are not punished as crimes elsewhere, for the benefit of nations inimical, if not hostile, to us, and against states struggling for independence and liberty in emulation of our own example.

No; these concessions to the peace of the world were made for the time when they were enacted. It was an opportune and patriotic policy. The preservation of the republic was the first duty of our fathers, as it is now ours. It is destined, if sustained, to be the grand disturber of the right divine of kings, the model of struggling nations, the last hope of the independence of states and of rational liberty.

To the example and prospect of our fathers we still adhere. But if the time has come for which they waited and worked, or whenever it shall come, in which the rights of the country can be asserted, its interests protected without departure from the established policy of our government, which we indorse without hesitation, and to which we adhere without reservation, it is our opinion that the opportunity should not be lost. And we therefore recommend, as incident to this duty and this day, a thorough revision of the statutes affecting our national relations with other governments, and the enactment of such laws as will limit its prohibitions and restrictions to those imposed by the laws of nations, the stipulation of treaties, the reciprocal legislation of other governments, the freedom of commerce, the independence of states, the interests of civilization, and that will curb the power of nations at war, and strengthen and extend the rights of those at peace.

Ships are articles of commerce; they are in no liberal or just sense contraband of war, nor are the materials of which they are made. The recent improvements in naval architecture are such as to diminish the distinctions between merchant-vessels and ships of war, and to facilitate the adaptation of one to the purposes of the other. A strong-built, swift-sailing merchant vessel or steamer could be made with a single gun an effective war vessel. To prohibit our citizens from building such vessels or selling material for their construction at a time when all nations, except our own, are at war, because they may be employed for hostile purposes by foreign subjects, or to demand bonds in double the amount of vessel, cargo, and armament, and to require officers of the customs to seize and detain them whenever cargo, crew, or "other circumstances" shall render probable a suspicion that they are to be so used, and where American citizens are part owners only, is substantially to deprive them of their rights to engage in the construction of vessels or to furnish materials therefor. Considering the limitless capacity of the country in this respect, it is a privilege that ought not to be surrendered except upon grounds of absolute necessity and justice.—(Appendix to British Case, vol. v, pp. 347, 348.)

The principal alterations proposed in that bill were to make it clear that "fitting out" a vessel for a belligerent was not prohibited, and that there must be "fitting out and arming;" to repeal the clauses known as "bonding clauses;" to insert a declaration that the act should not "prohibit citizens of the United States from selling vessels, ships, or steamers built within the limits thereof, or materials or munitions of war the growth or product of the same to inhabitants of other countries not at war with the United States;" and to repeal the clauses making it an offense to begin or set on foot, or provide or prepare the means for any military expedition or enterprise to be carried on from the limits of the United States against any foreign country at peace with the United States, (the clause under which the Fenian leaders were prosecuted,) and which authorize the President to employ the military or naval forces of the republic to prevent such expeditions.

The bill did not become a law, as the Senate refused to pass it without consideration, and referred it to the Senate Committee on Foreign Relations; and Congress adjourned without the committee having made a report.

The immediate effect of the bill, if passed, would have been to facilitate the dispatch from the ports of the United States of vessels to be employed by Chili and Peru in the war they were then carrying on against Spain.

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[153] *ANNEX (C.)

POSITION AND DUTIES OF THE LAW-OFFICERS OF THE CROWN IN ENGLAND.

Annex (C.)

As it has been necessary to refer from time to time to the opinions given by the British law-officers, it may be convenient to explain more precisely than has been hitherto done what is their position as the legal advisers of Her Majesty's government.

In England there is no ministry of justice or similar department of state to which recourse can be had by other departments when matters are brought before them on which a decision involving a question of law is required.

This want is supplied by the appointment of three law-officers, as they are called. Two of these—the attorney-general and solicitor-general—are barristers or advocates, with seats in the House of Commons, who have been selected by the ministry of the day, and who leave office when that administration is changed. They occupy, therefore, a double position—as the confidential advisers of the government on legal subjects, and as the natural defenders and expounders in Parliament of the proceedings which the government may adopt upon their recommendation.

The third law-officer—the Queen's advocate—is a permanent official, and does not leave office on the resignation of the ministry by whom he was appointed. It has been usual to select for this office a barrister who has a special knowledge of civil and international law; and he is in consequence more particularly the legal adviser of the foreign office. Like, however, the attorney-general and solicitor-general, he has private practice as an advocate, and has generally numerous duties devolving upon him in connection with ecclesiastical and civil jurisdiction.

The law-officers have no bureau or office set apart for their use, and no regular staff of assistants or archives. As the Queen's advocate therefore frequently possesses, from the permanent character of his appointment, a knowledge of official precedents with which the other law-officers may not be familiar, he generally acts as their draughtsman in the preparation of reports. Up to the date of Sir John Harding's retirement the Queen's advocate's name stood first in the patent or letter of appointment under which the law-officers act; and he had, therefore, precedence over the other two. The result was that papers on which an opinion was requested were sent to him first, and, when he had perused and written his minute upon them, were passed on to the attorney-general, and afterward by him to the solicitor-general. In all cases of importance, and particularly when time is pressing, it is usual for the three law-officers to meet and confer together, after they have all read the papers, the appointment for the purpose being usually made by the senior in rank of the three.

Having thus shown the position occupied by the law-officers toward each other, and toward the government, it remains to explain the manner in which papers are referred to them, taking as an example questions arising under the foreign-enlistment act of 1819.

By the 5th, 6th, and 7th clauses of that act the officers of customs and excise were empowered to seize and detain vessels in case of contravention of the act, in the same manner as vessels were seized and detained under the laws for the protection of the revenues of customs and excise, or the laws of trade and navigation.

The duties of the officers of customs being primarily for the collection and protection of the revenue, the collectors or other head officers of the customs at the ports are under the authority of the lords commissioners of Her Majesty's treasury, of which department the board of customs in London is a branch office. When, therefore, the consul of a foreign belligerent power has a complaint to make at a port that the foreign-enlistment act is being contravened to the prejudice of his country, he proceeds to the collector of customs, and lays before him the evidence he may have to adduce in support of the charge. This evidence is generally in the form of written statements, or affidavits, drawn up in proper shape, and sworn to, or solemnly declared to be true, before a magistrate. Copies or duplicates of these affidavits will then be forwarded by the customs collector to the board of customs in London, and by the consul to the diplomatic representative of his country.

In London the board of customs will transmit the affidavits to the treasury, and probably also take the opinion of their departmental legal adviser upon them. Some little time is consumed in the mere transmission of the papers, the custom-house being situated on the Thames, below London Bridge, and the treasury in Whitehall, near the Houses of Parliament, the distance between the two being about three miles.

The treasury will next send the papers to the foreign office, and ask instructions. In the meanwhile the foreign minister will have [154] received the affidavits and dispatch inclosing them from the *consul, and will likewise bring or send them to the foreign office. The secretary of state for foreign affairs immediately directs them to be transmitted to the law-officers for their opinion. This is done by writing a letter addressed to the three law-officers, and requesting their opinion upon the papers at their earliest convenience. This letter is taken to the senior law-officer, either to his chambers or to the court in which he may be, or sometimes to his private residence; he, when he has read and considered the papers, either sends them on to his colleague next in order of precedence, (by whom, in that case, they are transmitted to the third,) or makes an appointment for a meeting to deliberate on the subject, in the mean time retaining the papers in his own hands. When all the law-officers have had the opportunity of sufficiently considering the papers, they consider, in consultation together, the draught report, (prepared usually, as previously stated, by the Queen's advocate, and a letter is drawn up, fair copied, and signed by them, containing their opinion. This letter is sent to the foreign office, and the secretary of state is guided by it in the reply which he gives to the treasury and foreign minister.

INSTRUCTIONS

TO

THE AGENT AND COUNSEL,

AND

PROCEEDINGS AT GENEVA

IN

DECEMBER, 1871, AND APRIL, 1872.

INSTRUCTIONS.

No. 1.

Mr. Davis to Mr. Fish.

DEPARTMENT OF STATE,
Washington, November 13, 1871.

SIR: Herewith I hand you a printed copy of the Case which I have prepared to be presented to the Tribunal at Geneva on behalf of the United States.

This Case will be accompanied by seven volumes of Documents, Evidence, and Correspondence. Five of these volumes consist of the correspondence and other matter transmitted to the Senate by the President, April 7, 1869. The sixth volume contains an arranged selection from the previous five volumes, and a quantity of new matter from the captured rebel archives and elsewhere. This volume and its full table of contents and the excellent index in the seventh volume, were prepared by Charles C. Beaman, jr., esq. It gives me much pleasure to record my sense of the great value of Mr. Beaman's services. Any one who looks at this volume will see how carefully and intelligently he has performed his work.

The seventh volume contains some miscellaneous matter and full statements of the claims for losses, national and individual. The former were prepared at the Navy Department. Their completeness leaves nothing to be desired. The latter were prepared under my direction by the clerks in this Department, and show the nature and amount of each claim, and the proof on file in the Department by which it is supported. I desire to bear testimony to the intelligence and fidelity with which this work has been done by the clerks charged with it. For days, I may say weeks, in the most oppressive part of the summer, they staid cheerfully at the Department, working upon this statement until nearly midnight each day. Without such labor on their part it could not have been got ready in time.

I have the honor, &c.,

J. C. B. DAVIS.

No. 2.

Mr. Fish to Mr. Davis.

DEPARTMENT OF STATE,
Washington, November 14, 1871.

SIR: I have received the copy of the Case with your accompanying letter of yesterday. The President approves of your presentation of the Case, and you are instructed to present it and the seven accompanying volumes at Geneva, in the manner required by the Treaty, as the Case of the United States, and the documents, official correspondence, and other evidence on which they rely.

I am, &c.,

HAMILTON FISH.

No. 3.

Mr. Fish to Mr. Davis.

DEPARTMENT OF STATE,
Washington, November 14, 1871.

SIR: Your appointment and acceptance of the position of Agent of the United States before the Tribunal of Arbitration at Geneva make it necessary to give you brief instructions on the subject of your duties.

You are expected to be at Geneva as early as the morning of the 16th of December next. It is probable that the Tribunal will be organized on that day or the 17th. You will deliver the Case and the seven accompanying volumes, in duplicate, to each of the Arbitrators and to the Agent for Great Britain, as required by the Treaty. I am informed that Lord Tenterden will represent Great Britain as its Agent.

You are aware that Congress has made no appropriations for the payment of an agent's salary or expenses. The President will advise that your compensation shall be fixed at the rate of ten thousand dollars a year, and your necessary expenses suited to the position you occupy. In anticipation of such appropriation you will receive herewith a check upon Riggs & Co. for twenty-five hundred dollars, payable in gold coin.

Herewith also you will receive a copy of the cipher of this Department. You are familiar with the views and wishes of this Department in regard to the general position to be taken in the discussion of the Alabama claims before the Tribunal. Should any new important points be suggested which, in your judgment, materially vary from or in any way conflict with those views and wishes, you will communicate at once with the Department by telegraph, if necessary to have an immediate decision; by mail, if there be time to obtain a reply.

I am, &c.,

HAMILTON FISH.

No. 4.

Mr. Fish to Mr. Cushing.[*]

DEPARTMENT OF STATE,
Washington, December 8, 1871.

SIR: The President having appointed you one of the Counsel of the United States in the matter submitted by the Treaty between this Government and Her Britannic Majesty, signed in this city on the 8th day of May last, to the Tribunal of Arbitration to meet in Geneva, and the appointment having been accepted, it becomes necessary to give you, briefly, the President's instructions on the subject of your duties.

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[*] Same to Mr. Evarts and Mr. Waite.

The Case of the United States has been prepared, under the general supervision of the Secretary of State, by Mr. J. C. Bancroft Davis, Assistant Secretary of State, who has been appointed to attend the Tribunal as the Agent of the United States to represent this Government, generally, in all matters connected with the Arbitration.

It is accompanied by seven volumes, which contain the Evidence, Documents, and Correspondence on which the United States rely. Copies of the Case, and of the accompanying volumes, have been transmitted to you. Mr. Davis sailed for Europe some time since, and intelligence of his arrival in France has been received. He is instructed to be at Geneva on or before the 16th day of December instant, and there to deliver the Case and documents in duplicate, as required by the Treaty. It is expected that he will then receive the official copies of the British Case, &c. And it will be his duty to confer with the Counsel of the United States as soon thereafter as they may be ready, with a view to the preparation of the Counter Case required by the Treaty.

It is also expected that the Counsel shall be in Europe as soon as their convenience will permit. They will arrange among themselves, and with Mr. Davis, as to the most convenient place for their meetings and consultations. In the absence and in anticipation of an agreement as to such place of meeting, it is thought desirable that your first meeting be in Geneva, at as early a day after your arrival in Europe as shall be convenient; you can then agree with Mr. Davis as to the time and place of your future meetings.

The Case contains the general views of this Government on the subjects likely to be discussed at Geneva, so far as the facts are now known. Should it become necessary to deviate materially from the positions there taken, you will refer to this Department. Mr. Davis has a copy of the cipher of the Department; in case you find it necessary to communicate secretly, he will enable you to avail of the cipher.

Mr. Davis is fully instructed on the views which the President takes of the political questions that may be involved in the discussion of the subject as it now stands. Should the political questions involved in the case assume any different aspect, on the presentation of the Case of the British Government, or in the progress of the case before the Tribunal, they will be referred to this Department for submission to the President, and for his further instructions.

The presentation and the management of the legal argument, and the treatment of the questions of law and evidence, are committed to the discretion and judgment of yourself and your associate Counsel. The President thinks that in this branch of your duty you may find Mr. Davis's familiarity with the history of the Case of advantage, and that a free interchange of opinion and of views, and consultations with him, may be of benefit.

Mr. Davis is instructed to correspond frequently with this Department. You are invited to communicate with the Department as freely, and fully, and frequently as you may find it convenient. It is scarcely necessary to say that you are expected not to correspond (except for the purpose of obtaining information pertinent to the case) on the subject of the Case other than with this Department.

The instructions regarding the Counter Case also apply to the Argument.

The President desires to have the subject discussed as one between the two Governments; and he directs me to urge upon you strongly to secure, if possible, the award of a sum in gross.

In the discussion of this question and in the treatment of the entire Case, you will be careful not to commit the Government as to the disposition of what may be awarded, or what may be recovered in the event of the appointment of the board of assessors mentioned in the tenth article of the Treaty. It is possible that there may be duplicate claims for some of the property alleged to have been captured or destroyed, as in the cases of insurers and insured.

The Government wishes to hold itself free to decide as to the rights and claims of insurers, upon the termination of the case. If the value of the property captured or destroyed be recovered in the name of the Government, the distribution of the amount recovered will be made by this Government, without committal as to the mode of distribution. It is expected that all such committal be avoided in the argument of Counsel.

You are aware that Congress has made no appropriation for the expenses of the Arbitration. The President has invited the action of Congress on the subject, and you have been advised that he would recommend your compensation to be fixed at ten thousand dollars, (coin,) and your expenses suited to the important position you occupy.

In anticipation of the appropriation, you will receive herewith a check upon Riggs & Co., of this city, for twenty-five hundred dollars, payable in gold coin, for which you will please return a receipt.

Each of the Counsel will probably need the services of a clerk. In the appropriation which will be asked of Congress, an estimate will be included for the compensation of a clerk to each of the Counsel, at the rate of three thousand dollars per annum. It will depend on the granting by Congress of the aggregate amount asked whether this allowance can be made.

I transmit herewith a special Passport for yourself and such of your family or suite as may accompany you.

You will be pleased to advise me of the time when you contemplate to leave the country to enter upon the duties of your appointment, and also to inform the Department of your arrival in Europe and at Geneva, and keep it advised of your address from time to time, as you may remove from place to place, so that immediate communication may be had with you at all times, by telegraph or by mail.

A copy of these instructions will be furnished to Mr. Davis, and I inclose herewith a copy of the letter to him in which they are inclosed.

I have, &c.,

HAMILTON FISH.

No. 5.

Mr. Davis to Mr. Fish.

GENEVA, *December* 15, 1871. (Received January 10.)

SIR: I have the honor to report that I left Paris, the 13th instant, for this place in company with Mr. Adams, Sir Alexander Cockburn, and Lord Tenterden. On the route we were enabled to discuss and arrange the preliminaries for the organization of the Tribunal. This has made the work to-day comparatively light.

After calling upon the various Arbitrators this morning, we proceeded to the Hotel de Ville to pay our respects to the President of this Canton and to the Council of State. We were formally received by them, and Mr. Adams made a proper acknowledgment of our appreciation of their courtesy in tendering the Hotel de Ville for the conferences.

At three o'clock the gentlemen had all arrived at the rooms assigned to us. The proceedings commenced by an informal examination of the powers of the Arbitrators, all of which were found to be in due form.

Mr. Adams then said that as neither he nor Sir Alexander Cockburn could preside, it had been thought advisable to invite the gentleman next in rank, in the order named in the Treaty, to preside over the meetings of the Tribunal. Sir Alexander Cockburn said that he seconded the proposal, not only for the reason given by Mr. Adams, but because Count Sclopis was one of the most illustrious of the Jurists of Europe. Count Sclopis took the Chair, and returned his thanks in a neat speech.

It had been arranged beforehand that Mr. Stämpfli should be asked to name a Secretary. On the formal request by Count Sclopis, in the name of the Tribunal, he named Mr. Alexander Favrot, of Berne. The gentleman was waiting in the ante-room, and was conducted to his place by Lord Tenterden and myself.

I then presented the Case on behalf of the United States. Some new evidence from Melbourne and the Cape of Good Hope, which I had received at the last moment, had to be put in manuscript, in fact partly in press copies; but it is in press in Paris, and printed copies will soon be substituted.

I send herewith a copy of the note accompanying the Cases. It was identical with all parties.

I also send a copy of the note which Lord Tenterden presented with his Case and Documents.

DECEMBER 16.

The conference was held to-day at the Hotel de Ville pursuant to adjournment. All the Arbitrators were present, and it was determined to adjourn until June, unless one of the parties should convene an earlier meeting under the fourth article of the Treaty. I inclose copies of the Protocols of yesterday's and to-day's conferences.

I have, &c.,

J. C. B. DAVIS.

Mr. Davis to Mr. Adams.

[Inclosure No. 1.]

GENEVA, *December* 15, 1871.

The undersigned, Agent of the United States, appointed to attend the Tribunal of Arbitration convened at Geneva under the provisions of a Treaty, concluded at Washington, May 8, 1871, between the United States and Her Britannic Majesty, has the honor, in compliance with the provisions of Article III of the Treaty, to deliver herewith, in duplicate, to the Hon. Charles Francis Adams, the Arbitrator named by the President of the United States, the printed Case of the United States, accompanied by the documents, the official correspondence, and other evidence on which they rely.

The undersigned, &c.,

J. C. BANCROFT DAVIS.

[List of inclosures.]

I. The Case of the United States, (2 copies.)

II. Documents, Correspondence, and Evidence in support of the Case of the United States, in seven volumes, (2 copies.)

III. Certain other Documents, Correspondence, and Evidence in manuscript relating to the Alabama and to the Shenandoah, which reached the Agent too late to be printed with the volumes, (2 copies.)

IV. The Certificate of the Secretary of State of the United States to the correctness of certain copies contained in the above-named volumes, (2 copies.)

V. The Certificate of the Secretary of the Treasury of the United States to the correctness of certain other copies contained in the above-named volumes, (2 copies.)

VI. The Certificate of the Secretary of the Navy of the United States to the correctness of certain other copies contained in the above-named volumes, (2 copies.)

VII. The Certificate of the Secretary of War of the United States to the correctness of certain other copies contained in the above-named volumes, (2 copies.)

NOTE.—As soon as Inclosure No. 3 can be printed, printed copies will be furnished. It has been impossible to get them ready in time for this Conference.

Lord Tenterden to Mr. Davis.

[Inclosure No. 2.]

GENEVA, *December* 15, 1871.

The undersigned, Agent of Her Britannic Majesty, appointed to attend the Tribunal of Arbitration convened at Geneva, under the provisions of the Treaty concluded at Washington on the 8th of May, 1871, between Her Britannic Majesty and the United States, has the honor, in compliance with the provisions of Article III of the Treaty, to deliver herewith, in duplicate, to Mr. J. C. Bancroft Davis, the Agent appointed by the United States, the printed Case of the Government of Her Britannic Majesty, accompanied by the documents, the official correspondence, and other evidence on which it relies.

The undersigned, &c.,

TENTERDEN.

No. 6.

Mr. Davis to Mr. Fish.

GENEVA, *April* 15, 1872. (Received April 30.)

SIR: I have the honor to inform you that I arrived in Geneva on the evening of Saturday, the 13th instant.

Lord Tenterden arrived yesterday; General Cushing and Mr. Beaman also each put in an appearance yesterday. This morning we exchanged the Counter Cases. The British Counter Case was accompanied by a note from Lord Tenterden to the Arbitrators, of which a copy is inclosed. I thought the note required some notice on my part, and made the reply of which a copy is inclosed.

The Counter Cases on the part of Great Britain, which were exchanged at the Hotel de Ville, were the copies for Mr. Adams, Count Sclopis, Mr. Stämpfli, and myself. The copies for Sir Alexander Cockburn and Baron d'Itajubá were not exchanged in my presence. On our side, the copies for Sir Alexander Cockburn, Mr. Adams, Count Sclopis, and Mr. Stämpfli were delivered in the Hotel de Ville. The copy for Lord Tenterden was taken by his lordship from my room, and the copy for Baron d'Itajubá was, by his express desire, retained in Paris, to be delivered after exchange here.

After the adjournment I received from Paris your telegram relating to claims filed in the Department since March 22, and addressed a note to the Arbitrators and British Agent, of which a copy is inclosed.

From these various enclosures you will be able to learn exactly what has officially taken place here to-day.

I have, &c.,

J. C. B. DAVIS.

Mr. Davis to the Arbitrators.

[Inclosure No. 1.]

The undersigned, Agent of the United States, appointed to attend the Tribunal of Arbitration convened at Geneva, under the provisions of a Treaty concluded at Washington May 8, 1871, between the United States and Her Britannic Majesty, has the honor in compliance with the provisions of Article IV of the Treaty, to deliver herewith, in duplicate, the Counter Case of the United States and additional Documents, Correspondence, and Evidence, in reply to the Case, Documents, Correspondence, and Evidence presented to the Tribunal of Arbitration by the Government of Her Britannic Majesty.

J. C. BANCROFT DAVIS.

GENEVA, *April* 15, 1872.

[List of inclosures.]

1. Counter Case of the United States and additional Documents, Correspondence, and Evidence.
2. Documents, Correspondence, and evidence in reply to the Case.
3. Documents and Evidence entitled "Revised List of Claims filed with the Department of State, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the 'Alabama Claims.'"
4. Documents and Evidence entitled "the Cuban Correspondence, 1866–'71."
5. Copies of drawings of the Alabama, captured at Richmond by the forces of the United States.

Mr. Davis to Mr. Favrot.

[Inclosure No. 2.]

GENEVA, *April* 15, 1872.

SIR: Inclosed I transmit to you sealed letters for each of the Arbitrators appointed under the first Article of the Treaty of Washington, and the British Agent. A copy is inclosed.

I will thank you to forward the letters and accompanying documents, addressed to Count Sclopis, Mr. Stämpfli, Mr. Adams, Sir Alexander Cockburn, and Lord Tenterden, respectively.

I have been requested by the Baron d'Itajubá, to take charge of his letter, and I will see that it is duly delivered to him with the documents to which it refers.

I am, &c.,

J. C. B. DAVIS.

Mr. Favrot to Mr. Davis.

[Inclosure No. 3.]

HOTEL DE VILLE, GENEVA,
April 15, 1872.

SIR: I have to acknowledge the receipt of your letter of this date, inclosing letter for each of the Arbitrators appointed under the first Article of the Treaty of Washington, and for the British Agent.

I will forward the letters and the accompanying documents to Count Sclopis, Mr. Stämpfli, Mr. Adams, Sir Alexander Cockburn, and Lord Tenterden, respectively.

I hand you herewith the letter for Baron d'Itajubá, and I take note that you will see that it is delivered to him with the documents to which it refers.

I am, &c.,

ALEX. FAVROT.

Lord Tenterden to Mr. Davis.

[Inclosure No. 4.]

GENEVA, *April* 15, 1872.

The undersigned, Agent of Her Britannic Majesty, appointed to attend the Tribunal of Arbitration, convened at Geneva under the provisions of the Treaty concluded at Washington May 8, 1871, between Her Britannic Majesty and the United States, has the honor, in accordance with the fourth Article of the Treaty and the Protocol agreed upon at the meeting held on the 15th of December, to deliver herewith in duplicate to the Hon. J. C. Bancroft Davis, the Agent of the United States, the printed Counter Case of the Government of Her Britannic Majesty, accompanied by additional documents, official correspondence, and evidence in reply to the Case, Documents, Correspondence, and Evidence presented by Mr. Davis on the part of the United States to the Tribunal at that meeting.

The undersigned, &c.,

TENTERDEN.

Lord Tenterden to Mr. Davis.

[Inclosure No. 5.]

GENEVA, *April* 15, 1872.

SIR: I have the honor to transmit to you a copy of a note, which, by direction of Her Britannic Majesty's Government, I have addressed to each of the Arbitrators appointed under the first Article of the Treaty of Washington, and which will be delivered to them together with the Counter Case which I have presented.

I have, &c.,

TENTERDEN.

Lord Tenterden to the Arbitrators.

[Inclosure No. 6.]

GENEVA, *April* 15, 1872.

The undersigned, Agent of Her Britannic Majesty, is instructed by Her Majesty's Government to state to Count Sclopis, Baron d'Itajuba, M. Stämpfli, Sir A. Cockburn, Mr. C. F. Adams, that, while presenting their Counter Case, under the special reservation hereinafter mentioned, in reply to the Case which has been presented on the part of the United States, they find it incumbent on them to inform the Arbitrators that a misunderstanding has unfortunately arisen between Great Britain and the United States as to the nature and extent of the claims referred to the Tribunal by the first Article of the Treaty of Washington.

This misunderstanding relates to the claims for indirect losses put forward by the Government of the United States under the several heads of (1) "The loss in the transfer of the American commercial marine to the British flag." (2) "The enhanced payments of insurance." (3) "The prolongation of the war and the addition of a large sum to the cost of the war, and the suppression of the rebellion;" which claims for indirect losses are not admitted by Her Majesty's Government to be within either the scope or the intention of the reference to Arbitration. Her Majesty's Government have been for some time past, and still are, in correspondence with the Government of the United States upon this subject, and as this correspondence has not been brought to a final issue, Her Majesty's Government being desirous (if possible) of proceeding with the reference as to the claims for direct losses, have thought it proper in the mean time to present to the Arbitrators their Counter Case, (which is strictly confined to the claims for direct losses,) in the hope that, before the time limited by the fifth Article of the Treaty, this unfortunate misunderstanding may be removed.

But Her Majesty's Government desire to intimate, and do hereby expressly and formally intimate and notify to the Arbitrators that the Counter Case is presented without prejudice to the position assumed by Her Majesty's Government in the correspondence to which reference has been made, and under the express reservation of all Her Majesty's rights, in the event of a difference continuing to exist between the High Contracting Parties as to the scope and intention of the reference to Arbitration.

If circumstances should render it necessary for Her Majesty to cause any further communication to be addressed to the Arbitrators on the subject, Her Majesty will direct that communication to be made at or before the time limited by the fifth Article of the Treaty.

The undersigned, &c.,

TENTERDEN.

Mr. Davis to Lord Tenterden.

[Inclosure No. 7.]

GENEVA, *April* 15, 1872.

MY LORD: I have the honor to acknowledge the receipt of your note of this date, transmitting to me a copy of a note, which, by direction of Her Britannic Majesty's Government, you have addressed to each of the Arbitrators appointed under the first Article of the Treaty of Washington, and which has been delivered to them together with the Counter Case which you have presented.

I have now the honor to transmit to you a copy of a letter to the Arbitrators, which has been made necessary by your lordship's note to them, and have the honor to be,

Very respectfully, &c.,

J. C. BANCROFT DAVIS.

Mr. Davis to the Arbitrators.

[Inclosure No. 8.]

GENEVA, *April* 15, 1872.

The undersigned, Agent ot the United States, has the honor to inform the Arbitrators appointed under the provisions of the Treaty concluded between the United States and Her Britannic Majesty on the 8th day of May, 1871, that he has received from Lord Tenterden, the Agent of Her Britannic Majesty, a copy of a note this day addressed by his lordship to each of the Arbitrators, in which it is averred that some of the claims put forth by the United States in their Case are not within the scope or intention of this reference.

The instructions to the undersigned from his Government not having contemplated the probability of such a course on the part of Her Majesty's Government, the undersigned is compelled in reply to reserve to his Government its full right hereafter to vindicate before the Tribunal the authority which it understands the Tribunal acquired under the Treaty in this respect.

The undersigned, &c.,

J. C. BANCROFT DAVIS.

Mr. Davis to Mr. Favrot.

[Inclosure No. 9.]

GENEVA, *April* 15, 1872.

SIR: I have to inclose a letter for each of the Arbitrators and for Lord Tenterden, which I will thank you to forward to them.

I am, &c.,

J. C. B. DAVIS.

Mr. Favrot to Mr. Davis.

[Inclosure No. 10.]

HOTEL DE VILLE, GENEVA, *April* 15, 1872.

SIR: I have the honor to acknowledge the receipt of your note of this day inclosing a letter for each of the Arbitrators and for Lord Tenterden, which you request me to forward to them.

I shall have much pleasure in complying with your wishes, and avail myself of this opportunity to renew to you the assurances of the entire disinterestedness with which I remain, &c.,

ALEX. FAVROT.

Mr. Davis to Count Sclopis.

[Inclosure No. 11.]

The undersigned, Agent of the United States, has the honor to transmit herewith to Count Sclopis the following copy of a telegram received from the Secretary of State of the United States this day, and to ask to have it considered as a further appendix to the Counter Case of United States:

"Since March 22, additional claims for capture and destruction and damage by interruption of voyage have been filed to the amount of five hundred and five thousand eight hundred and forty-nine dollars forty-six cents, and claims for increased insurance premiums to the amount of three hundred and thirty-four thousand nine hundred and thirty-three dollars ninety-eight cents.

"FISH."

The undersigned has the honor to renew to Count Sclopis the assurance of his distinguished consideration.

J. C. BANCROFT DAVIS.

CORRESPONDENCE

RESPECTING

THE GENEVA ARBITRATION

AND

PROPOSED SUPPLEMENTAL ARTICLE TO THE TREATY.

CORRESPONDENCE RESPECTING THE GENEVA ARBITRATION.

No. 1.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *February* 2, 1872.

London journals all demand that United States shall withdraw claims for indirect damages, as not within intention of Treaty. Ministry alarmed. Am exerting myself with hope to prevent anything rash or offensive being done or said by this Government. Evarts here cooperating.

SCHENCK.

No. 2.

Mr. Fish to General Schenck.

[Telegram.]

DEPARTMENT OF STATE,
Washington, *February* 3, 1872.

There must be no withdrawal of any part of the claim presented. Counsel will argue the case as prepared, unless they show to this Government reasons for a change.

The alarm you speak of does not reach us. We are perfectly calm and content to await the award, and do not anticipate repudiation of the Treaty by the other side.

FISH.

No. 3.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *February* 5, 1872. (Sent at 8.30 p. m.)

Reserving comment and further information until I can send written dispatch, I communicate Granville's note giving notice of British interpretation of Treaty, as follows:

Earl Granville to General Schenck.

FOREIGN OFFICE, *February* 3, 1872.

SIR: Her Majesty's Government have had under their consideration the Case presented on behalf of the Government of the United States to the Tribunal of Arbitration at Geneva, of which a copy had been presented to Her Majesty's Agent.

I will not allude in this letter to several portions of the United States Case which are of comparatively smaller importance, but Her Majesty's Government are of opinion that it will be in accordance with their desire that no obstacle should be interposed to the prosecution of the Arbitration, and that it will be more frank and friendly toward the Government of the United States to state at once their views respecting certain claims of an enormous and indefinite amount which appear to have been put forward as matters to be referred to arbitration.

Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the case of the United States, including the loss in the transfer of the American commercial marine to the British flag, the enhanced payment of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and suppression of the rebellion.

I have stated above the importance which Her Majesty's Government attach to the prosecution of this arbitration.

The primary object of the Governments was the firm establishment of amicable relations between two countries which have so many and such peculiar reasons to be on friendly terms, and the satisfaction with which the announcement of the Treaty was received by both nations showed the strength of that feeling.

But there is another object to which Her Majesty's Government believe the Government of the United States attach the same value as they do themselves, namely, to give an example to the world how two great nations can settle matters in dispute by referring them to an impartial tribunal.

Her Majesty's Government, on their part, feel confident that the Government of the United States are also equally anxious with themselves that the amicable settlement which was stated in the Treaty of Washington to have been the object of that instrument may be attained, and that an example so full of good promise for the future may not be lost to the civilized world.

SCHENCK.

No. 4.

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, February 5, 1872.

MY LORD: I have the honor to acknowledge the receipt, on the evening of the 3d instant, of your note of that date, in which, after stating that Her Majesty's Government have had under their consideration the Case presented on behalf of the United States to the Tribunal of Arbitration at Geneva, you proceed to say that you will not allude to several portions of that Case which are of comparatively smaller importance, but that Her Majesty's Government are of opinion that it will be in accordance with their desire that no obstacle should be interposed to the prosecution of the arbitration, and that it will be more frank and friendly toward the Government of the United States to state at once their views respecting certain claims, which you describe as of an enormous and indefinite amount, which appear to have been put forward as matters to be referred to arbitration.

You then go on to state that Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the Case of the United States, including the loss in the transfer of the American commercial marine to the British flag, the enhanced payment of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and suppression of the rebellion.

Referring, then, to the importance which Her Majesty's Government attach to the prosecution of the arbitration, you proceed to speak of the objects which Her Majesty's Government had in view in that arbitration. The primary object, you say, was the firm establishment of amicable relations between two countries which have so many and such peculiar reasons to be on friendly terms; and you add that the satisfaction with which the announcement of the Treaty was received by both nations showed the strength of that feeling.

But you say there is another object to which Her Majesty's Government believe the Government of the United States attach the same value as they do themselves, namely, to give an example to the world how two great nations can settle matters in dispute by referring them to an impartial tribunal.

And you close your note with the statement that Her Majesty's Government on their part feel confident that the Government of the United States are also equally anxious with themselves that the amicable settlement, which was stated in the Treaty of Washington to have been the object of that instrument, may be attained, and that an example so full of good promise for the future may not be lost to the civilized world.

The purpose of Your Lordship's writing appearing to be to notify me of the opinions which Her Majesty's Government hold as to the power of the Tribunal of Arbitration to decide upon certain claims for indirect losses and injuries put forward in the Case of the United States, I shall hasten to communicate your note with this information to my Government.

In the mean time, I venture to assure Your Lordship that the Government of the United States will be gratified by this renewed assurance of the desire of Her Majesty's Government that no obstacle should be interposed to the prosecution of the arbitration, and by the frank and friendly terms in which this statement of their views is made to me. The objects which the Government of the United States proposed to itself in the Treaty, and the arbitration for which it provides being identical with those stated by Your Lordship—that is, the firm establishment of amicable relations between the two countries and the giving to the world an example showing how two great nations can settle matters in dispute by referring them to an impartial tribunal—I can further assure Your Lordship that my Government does reciprocate most fully and earnestly the anxiety that the speedy settlement by arbitration, which was provided for by the Treaty of Washington, may be attained, so that, as Your Lordship has eloquently expressed it, an example so full of good promise for the future may not be lost to the civilized world.

I have the honor to be, with the highest consideration, My Lord, Your Lordship's most obedient, humble servant,

ROBT. C. SCHENCK.

No. 5.

General Schenck to Mr. Fish.

[Extract.]

No. 148.] LEGATION OF THE UNITED STATES,
London, *February* 10, 1872. (Received February 23.)

SIR: * * * * * * * * *

One of these debates, they say, was, in part at least, in the hearing of the United States Minister, who was present in the House of Lords, and was doubtless communicated to his Government; and all the debates on that occasion must have been carried to the knowledge of the Government of the United States by the printed and published reports, and yet no protest or other communication objecting to such interpretation was made by the United States to this Government. It is held, therefore, that there was on one part an implied acquiescence in that meaning given to the instrument. Now, I had supposed that the treaty having been concluded and published, and its provisions and language carrying with them their own meaning, to be interpreted with or without resort to the light supplied by the protocol and the history of the negotiation, we were hardly obliged to go further and watch for what might be said on the subject, *pro* or *con*, in a legislative body engaged in discussion on it. Indeed, it appears to me that remonstrances or criticisms directed from our Government at the speeches made in Parliament might possibly have been regarded as an impertinence. In this instance we were certainly not called upon to take either the side of Lord Cairns or of Lord Granville in the difference between them.

It seems to be admitted even here that such notice of what was said would have been uncalled for, except for the circumstance that the Lords and Members of Parliament who argued for the same British interpretation now put forward were the principal Secretary of State for Foreign Affairs and two of the negotiators of the Treaty.

It would keep the diplomatic agents of the United States in London and of Great Britain in Washington rather busily occupied during the sessions of Congress and of Parliament if they were required to note and report, for comment or answer by their respective Governments, whatever might be said in those assemblies, at the risk otherwise of being bound and concluded by all the declarations made by legislators.

In point of fact, so far as I am personally concerned, although of the least possible consequence, I can state that I was only present at, and heard, the speech of Lord Russell in the House of Lords, and the first speech of Lord Granville in reply. Our interest on both sides, as you will see from my dispatches of that date, was at that time concentrated on the question of interpretation and defense of the second rule in the sixth article.

But if from silence is to be argued consent, mark how infinitely stronger a case on this principle we had against Great Britain, but which she never would admit the force of, on another branch of the negotiation of the Treaty of Washington. Near two years and a half after the treaty of 1846, Mr. Bancroft, then our Minister here, sent to Lord Palmerston, then British Secretary of State for Foreign Affairs, a copy of the United States surveys of the waters of Puget Sound and those dividing Vancouver's Island from our territory, accompanied by a note in which he said, "Your Lordship will readily trace the whole course of the channel of Haro, through the middle of which our boundary-line passes." Lord Palmerston wrote to Mr. Bancroft in reply, thanking him for the surveys, but not taking the slightest exception to the statement as to the position of the boundary-line which they have since so fiercely contested, and which we have had to submit to arbitration.

* * * * *

I have the honor to be, very respectfully, your obedient servant,

ROB'T C. SCHENCK.

No. 6.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *February* 27, 1872. (Sent 12.30 p. m.)

Granville informed me confidentially last night that Thornton has telegraphed him that Washington Cabinet has rejected your draught of reply to his note, and taken further time to consider, but that you have suggested he should make some proposal. He then said to me that in his note of third he had stated the views of Her Majesty's Government as to indirect claims; that there were other portions of American Case they regret, and some of which appear to introduce matters not germane to reference; that he has not been able to consult Cabinet here, but is individually prepared to recommend to them, and thinks with reasonable expectation of success, that they should not press for withdrawal of American Case, if the Government of the United States will undertake that their Agent shall inform Arbitrators at or before their meeting in June that the United States do not ask award on indirect claims, nor that such claims should be taken as an element of consideration in a gross award, nor brought forward in case of reference to assessors.

I made no comment, except to say that this was only equivalent to asking us to withdraw our Case, and I gave no intimation of belief that it could be accepted.

SCHENCK.

No. 7.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *February* 27, 1872.

Reported rejection untrue. Entire unanimity. Answer now being copied. Granville's suggestion inadmissible.

FISH.

No. 8.

Mr. Fish to General Schenck.

No. 144.]

DEPARTMENT OF STATE,
Washington, February 27, 1872.

SIR: I have laid the note from Earl Granville, addressed to you, bearing date the 3d of February instant, before the President, who directs me to say that he sincerely desires to promote that firm and abiding friendship between the two nations to which the note so happily refers.

It was under the inspiration of such sentiments that he accepted the invitation of Her Majesty's Government for the establishment of a Joint High Commission to treat and discuss the mode of settling certain questions referred to therein, and suggested on his own part that the proposed Commission should also have authority to consider the removal of the differences which arose during the rebellion in the United States, growing out of the acts committed by the vessels, which have given rise to the claims generically known as the "Alabama claims."

It was his earnest hope that the deliberations of the Commission would result in an acceptance by Her Majesty's Government of the proposition, submitted by his direction, that a gross sum be agreed upon and paid to the United States, as an amicable settlement of all claims of every description arising out of such differences, instead of the lengthened controversy and litigation which he foresaw must attend any plan of arbitration. He was the more solicitous that such an amicable settlement, without the intervention of third parties, should be adopted, because he feared that so thorough and comprehensive a presentation before the Tribunal of Arbitration of the matters of law and of fact on which the claims of this country rest, as it would be his duty to cause to be made, might, for the moment, revive past excitements and arouse unnecessary apprehensions, if not imperil those ties of international kindness and good will he so much desires to strengthen and make perpetual.

The regret which he felt for the rejection by Her Majesty's Commissioners of the proposition for an amicable settlement is revived with great force by the necessity of this correspondence.

The proposition for a Joint High Commission, which was made by Her Majesty's Government, would not have received the approbation of the President had he supposed it was not to comprehend a consideration and adjustment of all the differences growing out of the acts of the cruisers; nor could he have given his sanction to the Treaty had it been suggested to him or had he believed that any class of the claims which had been presented by this Government were excluded by the terms of submission from presentation on the part of this Government to the Tribunal of Arbitration. It was, in his appreciation, the chief merit of the mode of adjustment adopted by the Commission, that it was on both sides a frank, full, and unreserved surrender to impartial arbitrament, under the rules therein prescribed, of everything that had created such differences. Whatever degree of importance might here or there be attached to any of these complaints, the President desired and intended, as had the American Commissioners, that all, of every form and character, should be laid before the Tribunal for its final and absolute disposition, either by recognition and settlement, or by rejection, in order that in the future the harmony of personal and political intercourse between the two countries might never again be disturbed by any possible phase of the controversy.

In his opinion, since entry upon a thorough trial of the issues which divide the two Governments could not be avoided, the claims for national or indirect losses, (referred to in the note of Earl Granville,) as they are put forward by this Government, involve questions of public law which the interests of both Governments require should be definitely settled.

Therefore it is with unfeigned surprise and sincere regret that the President has received the intimation, conveyed in Earl Granville's note, that Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration to decide upon certain claims for indirect losses and injuries.

His Lordship, however, does not assign any reason for the opinion that losses and injuries with respect to which there has been no concealment—which were presented to the British negotiators at the opening of the discussion in precisely the same manner as they are put forward in the "Case"—not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration in a final settlement of all differences between the two countries, which remained unchallenged through the entire negotiations, and not relinquished in the Treaty, but covered by one of its alternatives, are not within the jurisdiction of the Arbitrators.

Unadvised as to the reasoning which has brought Her Majesty's Government to the opinion stated by Lord Granville, the President is unable to adopt it; but, being convinced of the justice of his views that the Treaty contemplated the settlement of all the claims of the United States, is of the opinion that he could not abandon them, except after a fair decision by an impartial arbitration. He seeks no meaning in the Treaty which is not patent on its face; he advances no pretensions at Geneva which were not put forth pending the negotiations at Washington.

This Government knows not where to find the meaning or the intent of the Treaty unless within the Treaty itself.

The object of the Treaty, as declared in its preamble, was "to provide for an amicable settlement of all causes of difference between the two countries;" but the Treaty is not, of itself, the settlement; it is an agreement between the Governments as to the mode of reaching a settlement, and its Article XI engages the contracting parties to consider the result of the arbitration as a full, perfect, and final settlement of all the claims. Until that be reached, no proffer of withholding an estimate of the indirect losses, dependent on the hope of an amicable settlement, can be claimed as a waiver or an estoppel.

The first article recites that differences have arisen between the two Governments, and still exist, and provides, "in order to remove and adjust all complaints and claims on the part of the United States, that all the claims *growing out of acts* committed by the aforesaid vessels, and generically known as the 'Alabama claims,'" be referred to a tribunal of arbitration, to be composed as therein provided. There is no limitation or restriction to any part or description of the claims. *All* the claims growing out of certain acts, and generically known as the "Alabama claims," were referred. What they were is a question of fact and of history. Which of them are well founded is a question for the Tribunal of Arbitration.

What are called the indirect losses and claims are not now put forward for the first time. For years they have been prominently and historically part of the "Alabama claims."

It would be superfluous to quote, or, perhaps, even to refer to, particular passages in the published instructions of this Government to their minister to Great Britain; in the notes of that minister to Her Majesty's Principal Secretary of State for Foreign Affairs; or in other public papers, to show that the expectation of this Government has, from the beginning of the acts which gave rise to the "Alabama claims," been that the British Government would indemnify the United States. Incidental or consequential damages were often mentioned as included in the accountability.

In the progress of the acts which gave rise to the claims, high British authority was not wanting to warn Her Majesty's Government in the House of Commons that "they had been inflicting an amount of damage on that country (the United States) greater than would be produced by many ordinary wars," and to indicate, as part of that damage, the losses to whose presentation exception is now taken.

Public men in both countries discussed them, while the public press on the one side and on the other advanced and combated them with an earnestness and warmth that brought them into a prominence beyond the direct losses and injuries sustained by individuals.

A detailed statement of their claims, enumerating and setting forth the indirect losses precisely as they are advanced in the Case, was submitted by the American negotiators to the Joint High Commission in the first discussion of the claims, on the 8th day of March, and appears in the Protocol, approved on the 4th day of May.

Her Majesty's Government, therefore, cannot, in the absence of any specific exclusion of these damages by the Treaty, be said to be taken unawares by their presentation to the Tribunal, and the President was not at liberty to regard as withdrawn or settled any of the claims enumerated in a statement prepared and approved by the Joint High Commission after their discussions were closed, and within four days of the signing of a treaty which declares that the differences which had arisen with respect to the "Alabama claims" still exist. Appearing thus, from whatever cause, not to have been eliminated from the enumerated claims of the United States, the President had not the power, of his own accord, to withhold them from the Case to be presented to the Tribunal of Arbitration; but in frankness and in sincerity of purpose to remove, in the spirit of the Treaty, all causes of difference between the two Governments, he has set them forth before the Geneva Tribunal, content to accept any award that the Tribunal may think fit to make on their account.

It is within your personal knowledge that this Government has never expected or desired any unreasonable pecuniary compensation on their account, and has never entertained the visionary thought of such an extravagant measure of damages as finds expression in the excited language of the British press, and seems most unaccountably to have taken possession of the minds of some, even, of the statesmen of Great Britain.

A mixed commission is now in session in this city, under the Treaty, to which are referred all claims of citizens or subjects of either Power (other than Alabama claims) which arose out of acts committed during a specified period.

In the correspondence which preceded the agreement for the meeting of the Joint High Commission which negotiated the Treaty, language was purposely agreed upon and used to express the idea which the representatives of the two Governments entertained, that no claim founded on contract, and especially, no claim on account of the rebel or confederate cotton debt, was to be presented. Similar language, and for the same avowed and admitted purpose, was used in the Treaty.

Among other claims of an unexpected character presented by the agent of the British Government, there was one for a part of the confederate debt, which is understood to be held in Great Britain to the extent of many millions. Immediately on its presentation the United States remonstrated, and requested the British Government to instruct their agent to withdraw that claim. Their remonstrance was unheeded; their request was not answered. If any instruction was given, this Government was not informed thereof, and it failed to be observed: and the claim was pressed to argument. The United States demurred before the commission to its jurisdiction over claims of that description.

and the decision of the commission disposed of the case adverse to the claimant.

The attitude of the two Governments is now reversed, with the difference in favor of the United States, that there was no question raised as to the understanding of both Governments at the date of the Treaty, with reference to the exclusion of claims of the character then presented.

The United States seek not to be the judge in their own case.

The course which they pursued afforded a happy solution to what might have been a question of embarrassment.

They desire to maintain the jurisdiction of the Tribunal of Arbitration over all the unsettled claims, in order that, being judicially decided, and the questions of law involved therein being adjudicated, all questions connected with or arising out of the Alabama claims, or "growing out of the acts" of the cruisers, may be forever removed from the possibility of disturbing the perfect harmony of relations between the two countries.

The President regrets that there should be any difference of opinion between the two Governments on any question connected with the Treaty.

He indulges, however, the earnest hope that the disposition which has been equally manifested by both Governments to remove all causes of difference between them will bring them to an agreement upon the incidental question which has arisen, and will allow no obstacle to deprive the world of the example of advanced civilization presented by two powerful States exhibiting the supremacy of law and of reason over passions, and deferring their own judgments to the calm interpretation of a disinterested and discriminating tribunal.

I am, sir, your obedient servant,

HAMILTON FISH.

No. 9.

Mr. Fish to General Schenck.

No. 145.]

DEPARTMENT OF STATE,
Washington, February 27, 1872.

I have to acknowledge your No. 139, of date of February 6, inclosing copy of Earl Granville's note to you of the 3d instant, and of your reply.

Your answer to Earl Granville is marked with your usual intelligence and prudence, and meets the warm approval of the President.

You will receive herewith a dispatch of the same date with this, giving the opinion of this Government on the question suddenly and abuptly raised by Her Majesty's Government, and presented by Earl Granville nakedly and without any argument.

Although no reply is invited by the note of the British Government, he settlement of all causes of difference between the two countries, and he successful example of the mode of settling international differences stablished by the Treaty, are so earnestly desired by this Government, hat we accept the friendly assurances of the British note, disregarding s bold and sudden announcement of an opinion which we think unsusained by the history of the negotiations between the two Governments, r by the events which gave rise to the claims, and for which we see no ogical foundation in the Treaty itself.

You will, therefore, read the dispatch referred to to Lord Granville, and may leave with him a copy in case he desires it.

I am, sir, your obedient servant,

HAMILTON FISH.

No. 10.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *February* 28, 1872. (Sent 5.40 p. m.)

Granville desires me to send change of language of his proposal, as follows: After word "June," substitute "that the United States do not ask the Arbitrators to admit or take into their consideration these indirect claims, either as elements for the determination of any one sum in gross which they may award in case of decision against Great Britain on the point of liability for any of the vessels, or otherwise; and that in case of damages being referred to assessors, they will not bring forward these claims before the assessors."

This variation of words does not seem to me to change meaning.

SCHENCK.

No. 11.

Mr. Fish to General Schenck.

[Telegram.]

DEPARTMENT OF STATE,
Washington, February 29, 1872.

Cannot agree to Granville's proposal as made. Desire to meet the British Government in any honorable adjustment of the incidental question which has arisen. Our answer is very friendly, and will, we hope, open the way for a settlement. Whatever the British Commissioners may have intended, or thought among themselves, they did not eliminate the claims for indirect losses, they never asked us to withdraw them, nor did they allude to them directly, or in plain terms; and after the deliberations of the Joint Commission were closed, Tenterden and the British Commissioners allowed them to be formally enumerated in statement of 4th May without a word of dissent.

FISH.

No. 12.

General Schenck to Mr. Fish.

[Extract.]

No. 179.] LEGATION OF THE UNITED STATES,
London, March 16, 1872. (Received April 1.)

* * * * * * *

On the day of the reception of your note of the 27th of February, and within a few hours after its arrival, I was enabled to have an interview with Lord Granville at the Foreign Office, with a view to making him acquainted, agreeably to your instructions, with its contents. Your communication had been looked for by the Government here with great anxiety.

Following in substance the language of your No. 145, I began by saying that, although Her Majesty's Government had not invited any reply to their note, but had been content to make a naked announcement, unaccompanied by reasons or argument, of their opinion that certain of the claims put forward by the United States in their Case presented at Geneva did not come within the province of the Tribunal of Arbitration to decide, yet such was the earnest desire of my Government for a settlement of all differences between the two countries, and for the successful carrying out of a treaty which offered to the world so good an example of a peaceful and effective method for the removal of international difficulties, that the President was most ready to accept the assurances of the friendly feelings which had prompted that note; and that you had communicated to me in a dispatch, with some fullness, the opinion and views of the Government of the United States on the point which they had raised. I said also to Lord Granville that I was authorized to read to him the dispatch referred to, and, if he desired it, to leave with him a copy of it.

He remarked to me that, being just then pressed and occupied as I must know he was, if I were to read it he should not probably make it the subject of any comment at that time; and he said, if agreeable to me, therefore, and understanding that, anticipating his request for a copy, I had one already prepared, he would ask me to leave that with him that he might have it to lay before the Cabinet at an early meeting. This, of course, I consented to do. I gave him the copy, therefore, leaving him to return to the House of Lords, from which he had been hurriedly called to meet his appointment with me.

Before we parted, however, I thought it proper to say to his Lordship that as Her Majesty's Government would undoubtedly take a little time, perhaps a few days, to consider whether they should make any answer, and what answer, to this communication from the United States, if at any time in the interval he deemed it advisable, in the interest of our two countries, to have free, confidential conversation with me, or if he thought that good understanding might be promoted by any exchange of unofficial suggestions touching some mode of issue from our present complication, I would always be happy to meet him and co-operate with him in such friendly endeavor. He assented at once cordially to the propriety of our keeping ourselves in such relation and free unofficial intercourse with each other; but he did not express himself as hopefully, as he thought I did, of an ultimate satisfactory adjustment.

I have the honor to be, very respectfully, your obedient servant,

ROBT. C. SCHENCK.

No. 13.

General Schenck to Mr. Fish.

No. 180.] LEGATION OF THE UNITED STATES,
London, March 21, 1872. (Received April 1.)

SIR: I have barely time to transmit, so as to catch at Queenstown the mail which has left Liverpool to-day, the reply of Lord Granville to your dispatch of the 27th February. It came to me at eleven o'clock last night, and the printed "Memorandum" which accompanies it as an inclosure, and which is to be taken as a part of the communication, reached me only this afternoon.

I send also, herewith, a copy of my answer to his Lordship, acknowledging the receipt of his note and the "Memorandum."

You will observe that Her Majesty's Government have construed your dispatch to me as containing apparently an invitation to open fully a discussion with you on the question of the right of the United States to include in their Case presented at Geneva any claim for indirect losses or damages. There is nothing advanced, however, either in the way of any proposal for the removal of the difficulty between us, or intimating what may be the consequence in case of continued difference of opinion. It is still but the notice which was contained in Lord Granville's note of the 3d ultimo, accompanied now by the reasons which have led Her Majesty's Government to the conclusion which was then communicated.

But I must close in haste, without further comment.

I have the honor to be, sir, your obedient servant,

ROBT. C. SCHENCK.

[Inclosure 1 in No. 13.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *March* 20, 1872.

SIR: I have laid before my colleagues Mr. Fish's dispatch of the 27th ultimo, of which, at my request, and authorized by your Government, you gave me a copy on the 14th instant.

Her Majesty's Government recognize with pleasure the assurances of the President that he sincerely desires to promote a firm and abiding friendship between the two nations; and, animated by the same spirit, they gladly avail themselves of the invitation which your Government appear to have given, that they should state the reasons which induced them to make the declaration contained in my note to you of the 3d ultimo, and which I then purposely omitted, in the hope of obtaining, without any controversial discussion, the assent of the Government of the United States.

Mr. Fish says, "What are called the indirect losses and claims are not now put forward for the first time. For years they have been prominently and historically part of the 'Alabama claims.' It would be superfluous to quote, or perhaps even to refer to, particular passages in the published instructions of this Government to their Minister to Great Britain, in the notes of that Minister to Her Majesty's Principal Secretary of State for Foreign Affairs, or in other public papers, to show that the expectation of this Government has, from the beginning of the acts which gave rise to the 'Alabama claims,' been that the British Government would indemnify the United States. Incidental or consequential damages were often mentioned as included in the accountability." This assertion does not appear to me accurately to represent the facts as they are shown in the correspondence between the two Governments. It is true that in some of the earlier letters of Mr. Adams vague suggestions were made as to possible liabilities of this country extending beyond the direct claims of American citizens for specific losses arising from the capture of their vessels by the Alabama, Florida, Shenandoah, and Georgia; but no claims were ever defined or formulated, and certainly none were ever described by the phrase "Alabama claims," except these direct claims of American citizens.

No mention of any claim for national or indirect losses had been made during the negotiation, commencing with Mr. Seward's dispatch to Mr. Adams, dated the 27th of August, 1866, and ending with the signature of the Convention of the 10th of November, 1868, by Lord Stanley and Mr. Reverdy Johnson, by the IVth Article of which, power was given to Commissioners "to adjudicate upon the class of claims referred to in the official correspondence between the two Governments as the 'Alabama claims.'"

The first subsequent mention of any claim for national losses was in a communication, unauthorized by his Government, made by Mr. Reverdy Johnson, in March, 1869, to Lord Clarendon, in which he suggested that the terms of the Convention signed by him with Lord Clarendon, on the 14th of January, which comprised a reference to a Mixed Commission of the "Alabama claims," should be enlarged so as to include all claims on the part of either Government upon the other, an essential condition of the proposal being that, in case a claim was set up by the United States, founded on the recognition of the Confederate States as belligerents, it should be open to the British Government to advance claims on their part, such as a claim for injury to British interests by the assertion and exercise of belligerent rights by the United States upon British commerce.

Lord Clarendon at once declined to entertain this suggestion.

In Mr. Fish's dispatch of the 25th of September, 1869, the Government of the United States intimated that they considered there might be grounds for some claims of a larger and more public nature, though they purposely abstained at that time from making them; but the grounds indicated were not limited to the acts of the Alabama and other similar vessels, or to any mere consequences of such acts, nor were these public claims then described or referred to in any manner as "Alabama Claims." That expression, the "Alabama claims," which first occurs in a letter from Mr. Seward to Sir F. Bruce, of the 12th of January, 1867, had always been used in the correspondence between the two Governments to describe the claims of American citizens on account of their own direct losses by the depredations of the Alabama and other similar vessels, and had never been employed to describe, or been treated as comprehending, any public or national claims whatever of the Government of the United States.

Down, therefore, to the time when Her Majesty's Government proposed the appointment of a Joint High Commission to settle the Fishery Question and all other questions affecting the relations of the United States toward Her Majesty's possessions in North America, no actual claim against Her Majesty's Government had been formulated or notified on the part of the United States, except for the capture or destruction of property of individual citizens of the United States by the Alabama and other similar vessels.

When Her Majesty's Government consented, at the request of the Government of the United States, that the "Alabama claims" should be dealt with by the High Commission, it was in the full confidence that the phrase "Alabama claims" was used by the United States Government in the same sense as it had been used throughout the previous correspondence and in the conventions signed by Lord Stanley and Lord Clarendon.

National claims of an indirect character, such as those referred to in Mr. Fish's dispatch, could not be comprehended under the term "claims generically known as the Alabama claims." The possibility of admitting as a subject of negotiation any claim for indirect national losses has never been entertained in this country; and it was therefore without the slightest doubt as to such claims being inadmissible that the British High Commissioners were appointed and proceeded to Washington.

At a meeting of the British and United States High Commissioners on the 8th of March, the latter, after a general statement of the claims of the United States, proceeded to say that, in the hopes of an amicable settlement, no estimate was made of indirect losses, without prejudice, however, to the right of indemnification on their account, in the event of no such settlement being made; and they afterward proposed, by direction of the President, that "the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon."

Mr. Fish says that the President earnestly hoped that the deliberations of the Commission would have resulted in an acceptance by Her Majesty's Government of this proposition.

Her Majesty's Government cannot understand upon what this hope was founded.

The position which the Government of this country have maintained throughout all the negotiations has been that they were guilty of no negligence in respect of the escape of the Alabama and the other vessels, and have therefore incurred no liability for any payment, and they still maintain this position.

The only ground on which Her Majesty's Government could be asked to pay any sum would have been an admission on their part that there had been such negligence as rendered them justly liable to pay a sum in compensation. This would have been an absolute surrender of the position which has always been held by this country, and a confession, which could never have been expected from them, that they had been guilty of negligence.

Her Majesty's High Commissioners, therefore, could only declare at once that a proposal of an "amicable settlement" in this particular form could not be entertained, and Her Majesty's High Commissioners, on the part of this country, immediately made a counter-proposal, namely, the proposal of arbitration, and this proposal, after being to a certain extent modified on the suggestion of the United States High Commissioners, was accepted by them.

The modification suggested by the United States High Commissioners, and accepted by those of Great Britain, was a concession of no slight importance on the part of this country, namely, that the principles which should govern the Arbitrators in the consideration of the facts should be first agreed upon; and this concession was very materially enhanced when, in order to strengthen the friendly relations between the two countries and make satisfactory provision for the future, they further agreed that these principles should be those contained in the Rules in the VIth Article of the Treaty: for they thus accepted the retroactive effect of rules to which, nevertheless, they felt bound to declare that they could not assent as a statement of principles of international law in force at the time when the "Alabama claims" arose.

The friendly spirit of Her Majesty's Government was further shown by their authorizing Her Majesty's High Commissioners to express the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and the other vessels from British ports, and for the depredations committed by those vessels, and by their agreeing that this expression of regret should be formally recorded in the Treaty.

Nor did Her Majesty's Government object to the introduction of claims for the expense of the pursuit and capture of the Alabama and other vessels, notwithstanding the doubt how far those claims, though mentioned during the conferences as direct claims, came within the proper scope of the arbitration. They acquiesced in the proposal to exclude from the negotiations their claims on behalf of Canada against the United States for injuries suffered from Fenian raids—an acquiescence which was due partly to a desire on their part to act in a spirit of conciliation, and partly to the fact, stated by Her Majesty's High Commissioners, that a portion of these claims was of a constructive and inferential character.

The importance of these concessions must not be underrated. Nor can it have been expected by the Government of the United States that concessions of this importance would have been made by this country if the United States were still to be at liberty to insist upon all the extreme demands which they had at any time suggested or brought forward.

Her Majesty's Government considered themselves justified in treating the waiver of indirect claims, in the event of an amicable settlement, proffered by the High Commissioners of the United States, as one which applied to any form of amicable settlement, and therefore comprised, in like manner, the form of amicable settlement proposed by the British High Commissioners, accepted on the part of the United States, and recognized in the preamble of the Treaty.

Such a waiver was, in fact, a necessary condition of the success of the negotiation.

It was in the full belief that this waiver had been made that the British Government ratified the Treaty.

Her Majesty's Government are anxious that the considerations which made them hold this belief should be more fully explained to the Government of the United States than can be done in the form of a letter, and I have accordingly embodied them in a Memorandum, which I have the honor to inclose, and which I beg may be read with and considered as part of my present communication.

Her Majesty's Government do not deny that it is as competent for the Government of the United States as it is for themselves to assert that their own interpretation of the Treaty is the correct one. But what Her Majesty's Government maintains is, that the natural and grammatical construction of the language used in the Treaty and Protocols is in accordance with the views which they entertain, and sustains their assertion that the terms of reference to the Arbitrators are limited to direct claims, inasmuch as direct claims only have throughout the correspondence been recognized and repeatedly defined under the name of the "Alabama claims."

There are some passages in Mr. Fish's dispatch in which he defends the introduction into the American Case of the claims for indirect losses and injuries, which I cannot allow to pass without more special remark.

It is stated that they are put forward in the Case, not as claims for which a specific demand is made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration in a final settlement of all differences between the two countries, and as not relinquished in the Treaty, but covered by one of its two alternatives.

Her Majesty's Government do not perceive what "alternative" in the Treaty can cover these claims.

If, indeed, by this language Mr. Fish is to be understood as referring to the two different modes provided by Articles VII and X of the Treaty, for arriving at the amount of the payment to be made by Great Britain in the event of any liability being established, the answer seems obvious, viz, that these alternatives are applicable only to the settlement of the amount of damages, and not to the measure of liability.

Again, Mr. Fish states that the Treaty was not an amicable settlement, but only an agreement between the Governments as to the mode of reaching a settlement, and that no proffer of withholding an estimate of indirect losses can be claimed as a waiver until the result of the arbitration is arrived at; but he overlooks the fact that the Treaty is called an amicable settlement, not merely in relation to the "Alabama claims," but as an entirety; and even in relation to the "Alabama claims" alone, it must clearly be taken that the amicable settlement which it professed to provide was arrived at from the moment when the treaty containing the agreement to go to arbitration upon the claims was signed and ratified. If, according to Mr. Fish's view, an amicable settlement after a reference to arbitration can only be arrived at by an adjudication of the claims, it is obvious that no waiver of any such claims could, under such circumstances, ever be made, for before the time for waiver (on this supposition) had arrived the claims would already have been decided upon.

That Her Majesty's Government never intended to refer these claims to arbitration, and that in ratifying the Treaty they never contemplated their being revived in the argument before the Arbitrators, must have been obvious to you from the language used in the debate in the House of Lords on the 12th of June, on the motion for an address to the Queen, praying Her Majesty to refuse to ratify the Treaty.

On that occasion I distinctly stated this to be the understanding of Her Majesty's Government, and quoted the very Protocol of the 4th of May, to which I have referred above, as a proof that these indirect claims had "entirely disappeared." When Lord Cairns, to whose speech allusion has been made in the United States Case, subsequently said that extravagant claims might be put in and take their chance, he was met with expressions of dissent. Moreover, Lord Derby, while criticising the negotiation and the terms of the Treaty in other respects, particularized the withdrawal of indirect claims. "The only concession," he said, "of which I can see any trace upon the American side is the withdrawal of that utterly preposterous demand that we should be held responsible for the premature recognition of the South as a belligerent power, in company with that equally wild imagination, which, I believe, never extended beyond the minds of two or three speakers in Congress, of making us liable for all the constructive damages to trade and navigation which may be proved or supposed to have arisen from our attitude during the war."

I observed that you were present in the House of Lords on that occasion, and you informed me, on the 16th of December, that you were present during the speeches of Lord Russell and myself, and that you communicated the next day the full newspaper report of the debate to your Government.

Sir S. Northcote, in the House of Commons, repeated, in other words, the substance of my remarks on the limitation of the terms of reference; and as his speech is printed in the papers on Foreign Relations, recently laid before Congress, it must also have been reported to your Government. But neither on the occasion of my speech, nor of his, nor when the ratifications of the Treaty were exchanged on the 17th of June, did you call my attention to the fact that a different interpretation was placed on the Treaty and Protocol by Her Majesty's Government and the Government of the United States; nor, so far as Her Majesty's Government are aware, was their interpretation, thus publicly expressed, challenged either by the statesmen or the public press of the United States.

Her Majesty's Government must therefore confess their inability to understand how the intimation contained in my note of the 3d of February last can have been received by the President with surprise.

Mr. Fish urges that the claims for national indirect losses which have been put forward on behalf of his Government involve questions of public law which the interest of both Governments requires should be definitely settled.

Her Majesty's Government agree with Mr. Fish that it is for the interest of both countries that the rights and duties of neutrals upon some of the points hitherto thought open to serious controversy should be definitely settled, and had hoped that such a settlement had been secured by the Rules to which they have given their assent; but they cannot see that it would be advantageous to either country to render the obligations of neutrality so onerous as they would become if claims of this nature were to be treated as proper subjects of international arbitration.

Whatever construction may be placed upon the Ist Article of the Treaty, it is impossible to sever the terms of reference therein contained from the Rules in the VIth Article; and the measure of liability under the Arbitration, therefore, will be the measure of liability incurred by any neutral State which, after acceding to these Rules, may, "by any act or omission," fail to fulfill any of the duties set forth in them.

The United States and Great Britain have bound themselves by the Treaty to observe these Rules as between themselves in future.

They have, moreover bound themselves to bring these Rules to the knowledge of other maritime Powers, and to invite them to accede to them. Could it have been expected that those Powers would accept a proposal which might entail upon a neutral such an unlimited liability, and, in some instances, might involve the ruin of a whole country?

Her Majesty's Government cannot for themselves accept such a liability, nor recommend the acceptance of it to other nations.

Are the Government and people of the United States themselves prepared to undertake the obligation of paying to an aggrieved belligerent the expenses of the prolongation of the war and other indirect damages, if, when the United States are neutral, they can be shown to have permitted the infringement of any one, or part of any one, of the three Rules through a want of due diligence on the part of their executive officers?

To attach such tremendous consequences to an unintentional violation of neutrality

—it might be by a single act of negligence—would be to strike a heavy blow at the interests of peace; for war has scarcely any consequences more formidable to a belligerent than those which might thus be incurred by a neutral; and, while war offers a chance of gain, neutrality would, if such claims as these were once admitted, present without any such compensation the risk of intolerable loss.

With respect to the disclaimer made by Mr. Fish of any expectation or wish, on the part of the United States Government, to obtain any "unreasonable pecuniary compensation" on account of these indirect claims, I think it sufficient here to observe that, on the question of amount, the British people and Government have necessarily been obliged to look to the nature and grounds of the claims as they are stated in the Case of the United States, and have, of course, been unable to form a judgment from any other *data* of the expectations of those by whom the claims are advanced. If these claims could be considered as well grounded in principle, it appears to Her Majesty's Government to be capable of demonstration that the magnitude of the damages which might be the result of their admission is enormous. The grounds of these views are more fully stated in the Third Part of the inclosed Memorandum.

Mr. Fish has appealed to the proceedings at the Washington Claims Commission in connection with the Confederate cotton claims. Her Majesty's Government must, however, observe that there is no analogy between the two cases, as, by the Treaty, the Washington Commission has power "to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly, or to any and what extent, according to the true intent and meaning of the Treaty;" no similar words being used as to the powers of the Geneva Tribunal.

It is the function of the Washington Commission to decide upon a variety of general claims, not of one kind, nor limited or defined beforehand, and Her Majesty's Agent was instructed that his duty would *prima facie* be to present such claims as private individuals might tender for that purpose for acceptance or rejection by the Commission, Her Majesty's Government not intending to make themselves responsible either for the merits of the particular claims or for the arguments by which they might be supported. The jurisdiction of the Geneva Tribunal was limited to one particular class and description of claims.

The facts are as follows:

On the 11th of November, in pursuance of the general instructions which had been given to Her Majesty's Agent, a claim upon a bond issued by the so-called Confederate States for a sum forming part of a loan called the "Cotton Loan," contracted by those States, and for the payment of which certain cotton seized by the United States was alleged to have been hypothecated by the Confederate Government, was filed at Washington; and on the 21st I learned from you that the United States Government objected to claims of this kind being even presented.

Some delay took place in consequence of unavoidable causes, with some of which you are well acquainted. And there were others, such as the necessity not only of communicating with my colleagues, but with Sir Edward Thornton, and of considering how far, under the same general description, there might be included claims substantially different. The dispatches from Her Majesty's Agent giving the details of the nature of the claims, and of the demurrer made to it by the United States Agent, did not reach me until the 6th of December. I had, in the mean time, ascertained from Sir Edward Thornton that the expression "acts committed" had been used by mutual agreement in the negotiations which preceded the appointment of the High Commission with a view to exclude claims of this class from the consideration of the High Commissioners; those words being also used in the XIIth Article of the Treaty with regard to private claims. The question was brought before the Cabinet at its next meeting on the 11th, and was finally decided on the 14th, as recorded in a minute by Mr. Gladstone. This decision was that the Confederate cotton claims should not be presented unless in the case of bonds exchanged for cotton, which had thereby become the actual property of the claimant, and directions were given for a dispatch to be sent to this effect, and on the 16th I informed you that you might write to Mr. Fish that Her Majesty's Agent would be instructed not to present any claims that did not come within the provisions of the Treaty.

Although it appears that the understanding need not necessarily have extended beyond the rejection by the Commissioners of the claims, under the XIVth Article, by which the Commissioners have power to decide whether any claim is preferred within the true intent and meaning of the Treaty, (as was done with various claims under a similar Article in the Claims Convention of 1853,) Her Majesty's Government acceded to the construction which the United States Goverrment had put upon that understanding.

Mr. Fish will observe the feeling by which Her Majesty's Government were guided in coming to their decision on the 14th. They desired to put the most favorable construction upon any understanding which the United States Government might have supposed to exist.

Information reached me the next morning by telegraph of the adjudication, which

Her Majesty's Government had not expected to take place, upon the merits of the claim by the Commissioners. This required a reconsideration of the instructions, and fresh instructions were sent by the mail of the 23d, and also by telegraph, to Sir Edward Thornton to arrange with Mr. Fish that the presentation of claims which appeared to be manifestly without the terms of the Treaty should be withheld, and that when Her Majesty's Agent was of opinion that a claim belonged to a class that ought not to be presented, it would be desirable that an agreement to that effect should be made and signed by Sir Edward Thornton and Mr. Fish. These instructions were communicated to Mr. Fish.

Her Majesty's Agent has since acted in accordance with the decision of the Cabinet of the 14th of December. New claims of the like character have been tendered to him by parties who were unwilling to acquiesce in the decision of the Commissioners as applicable to their own cases, but which claims, under instructions from Her Majesty's Government, have not been presented.

I have now placed in your hands, for examination by the Government of the United States, a statement of the reasons which, in the opinion of Her Majesty's Government, sufficiently show that claims for indirect losses are not within the meaning of the Treaty; that they were never intended to be included by Her Majesty's Government; that this was publicly declared before the ratification, when the error, if any, might have been corrected; that such claims are wholly beyond the reasonable scope of any Treaty of Arbitration whatever; and that to submit them for decision by the Tribunal would be a measure fraught with pernicious consequences to the interests of all nations and to the future peace of the world.

I appreciate the desire substantially, if indirectly, expressed by the Government of the United States, to be advised of the reasons which have prompted the declaration made by me on behalf of Her Majesty's Government on the 3d of February, no less than the friendly and courteous language which has been employed by the United States Secretary of State. The present letter is intended by Her Majesty's Government, not as the commencement of a diplomatic controversy, but as an act of compliance with that most reasonable desire. They are sure that the President will be no less anxious than they are that the conduct of both Governments should conform to the true meaning and intent of the instrument they have jointly framed and signed, whether that meaning be drawn from the authoritative documents themselves or from collateral considerations, or from both sources combined.

Entertaining themselves no doubt of the sufficiency of the grounds on which their judgment proceeds, they think it the course at once most respectful and most friendly to the Government of the United States to submit those grounds to their impartial appreciation. Her Majesty's Government feel confident that they have laid before the President ample proof that the conclusion which was announced by me on the 3d of February, and to which I need hardly say that they adhere, cannot be shaken.

I have, &c.,

GRANVILLE.

[Inclosure 2 in No. 13.]

MEMORANDUM.

PART I.—On the waiver of claims for indirect losses contained in the 36th Protocol.
PART II.—On the construction of the Treaty.
PART III.—On the amount of the claims for indirect losses.

PART I.

On the waiver of claims for indirect losses contained in the 36th Protocol.

The first Protocol of the Conferences of the High Commission begins with a recital of the powers of the British Commissioners, stating Her Majesty's purpose in their appointment to be to "discuss in a friendly spirit with Commissioners to be appointed by the Government of the United States the various questions on which differences had arisen between Great Britain and that country," and to "*treat for an agreement as to the mode of their amicable settlement.*"

The Protocol of the 4th of May recounts that the American Commissioners stated, on the 8th of March, "that the history of the 'Alabama,' and other cruisers which had been fitted out, or armed or equipped, or which had received augmentation of force in Great Britain or in her Colonies, and of the operations of those vessels, showed (1) extensive *direct losses* in the capture and destruction of a large number of vessels with their cargoes and in the heavy national expenditures in the pursuit of the cruisers: and (2) *indirect injury* in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war, and the suppression of the rebellion; and also showed (3) that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly *liable for the acts of those cruisers and of their tenders;* that the *claims* for the loss and destruction of private property which had thus far been presented amounted to about $14,000,000, without interest, which amount was liable to be greatly increased by *claims* which had not been presented; that the cost to which the Government had been put in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers: that, in the hope of *an amicable settlement,* no estimate was made of the *indirect losses,* without prejudice, however, to *the right to indemnification on their account* in the event of *no such settlement* being made.

"The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They *also proposed* that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of *all the claims,* and *the interest thereon.*"

The British Commissioners abstained "from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of *so fair a mode of settlement* as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

"The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that *they could not consent to submit the question of the liability of Her Majesty's Government to arbitration, unless* the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon."

These principles were subsequently discussed and agreed upon, and incorporated in the Draft of the VIth Article of the Treaty.

On the 6th of May, the Commissioners met for their final conference, and Lord de Gray said that "it had been most gratifying to the British Commissioners to be associated with colleagues who were animated with the same sincere desire as themselves to bring about *a settlement* equally honorable and just to both countries."

Mr. Fish replied, that "from the first Conference the American Commissioners had been impressed by the earnestness of desire manifested by the British Commissioners to reach *a settlement worthy of the two Powers.* * * * His colleagues and he could never cease to appreciate the generous spirit and the open and friendly manner in which the British Commissioners had met and discussed the several questions that had led to the conclusion of *the Treaty, which it was hoped* would receive the approval of the people of both countries, and *would prove the foundation of a cordial and friendly understanding* between them for all time to come."

Two days afterward the Treaty was signed with the following Preamble:

"Her Britannic Majesty and the United States of America, being desirous to provide for *an amicable settlement* of all causes of difference between the two countries, have, for that purpose, appointed their respective Plenipotentiaries. * * * And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, *have agreed* to and *concluded* the following Articles."

In the view of Her Majesty's Government the statement made by the American Commissioners on the 8th of March contained a waiver of the claims for indirect losses contingent on an "amicable settlement" being arrived at; and this waiver consisted of two parts:

First, the affirmative statement that "in the hope of an amicable settlement no estimate was made of the indirect losses." The words "in the hope of an amicable settlement" are in themselves grammatically general, and, unless qualified by a subsequent limitation, mean, in the hope of any such settlement as the parties shall acknowledge to fall under the phrase "amicable settlement." Now, this part of the waiver, being a declaration in which the other party had an interest, and, so far, of the nature of the promise, could only be so limited by an express specification following it immediately, or at least before the other party had taken any step in reliance on its general character. But no such specification was made; nor does any specification at all as to the particular form of settlement appear in the Protocol. The phrase consequently retains the general character above described as its literal and grammatical meaning.

It might be said that the concluding words of the phrase—"no estimate was made of the indirect losses"—had a special regard to the form of amicable settlement thereafter proposed by the American Commissioners, viz, the payment of a gross sum. This, however, can only be maintained subject to the qualification that, if the estimate of indirect losses was withheld in the hope that that proposal would be accepted, and if the view of the American Commissioners was that the acceptance of that proposal alone would constitute the "amicable settlement," in consideration of which the estimate of indirect losses was withheld, then the next step for them, when the proposal was declined, was to present that estimate; or, if not, then in some other specific manner to keep alive the claim. But they did neither; they did not intimate or give notice to the British Commissioners that their hope of an "amicable settlement" had been frustrated or disappointed, nor did they say anything to the effect of making this first portion of the waiver dependent on the rejected proposal. And thus the phrase "an amicable settlement" is left to stand in its original and grammatical generality.

The second part of the waiver is as follows:

"Without prejudice, however, to the right of indemnification on their account [*i. e.*, on account of indirect losses] in the event of no such settlement being made." Its precise bearing obviously depends upon the meaning of the words "no such settlement."

Now the word "such" grammatically qualifies the word "settlement" by referring to the antecedent expression "amicable settlement." "Such," therefore, means "amicable;" and the right reserved by the American Commissioners is grammatically a right to revive the question of indirect losses *in the event of no amicable settlement being made*, and is nothing more.

It is to be observed that at this time no proposal whatever had been made for payment of a gross sum, or for any particular form or mode of settlement.

The only remaining question is whether the Treaty was itself "an amicable settlement," or, which is the same thing for the purposes of the argument, was *in ordine* toward an amicable settlement, and a step on the road to it.

This question is answered by the preamble of the Treaty, which declares that the President of the United States had (as well as Her Majesty) given his Commissioners certain powers "in order to provide for an amicable settlement" of certain differences, in which the "Alabama claims" were included; that these powers had been compared and verified; and that in virtue of them the Commissioners had agreed upon the Articles of the Treaty which are then set forth in order. The "amicable settlement" is here distinctly recognized not as a particular solution of the pending questions which had been proposed and set aside, but as an object of negotiation which had been provided for in a manner satisfactory to both parties, and the provision for which was embodied in the Treaty. The reservation, therefore, made by the American Commissioners had not come into play; the waiver remained in full force; and the indirect losses were excluded by the preamble of the Treaty from the scope of the arbitration.

PART II.

On the construction of the Treaty of Washington.

Upon the construction of the Treaty of Washington, apart from the Protocols, there appear to be three questions:

First. What claims are described by the words, "*the claims generically known as the 'Alabama Claims?'*"

Second. What vessels are described by the words, "*the several vessels, which have given rise to the claims generically known as the 'Alabama Claims?'*"

Third. What claims are described by the words, "*all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama Claims?'*" (being the words in which the subject-matter of the reference to arbitration agreed upon is defined.)

Each of these questions will be examined separately.

1. What claims are described by the words, "the claims *generically known* as the 'Alabama Claims?'"

The word "known" signifies that this collective expression had acquired a definite sense, supposed to be mutually understood, from its use in previous communications, between the same parties.

The word "generically" naturally signifies that all the claims intended were *ejusdem generis*.

The word "claims" itself naturally signifies demands actually presented or notified, either with or without a full specification of particulars.

The diplomatic correspondence, which preceded the negotiation, must therefore be referred to, to discover, first, what demands had been presented, or notified; and secondly, what had been the previous use of the phrase "the 'Alabama Claims?'"

The earliest intimation of any claims against this country was in the letter of Mr. Adams to Lord Russell, of 20th November, 1862; which spoke "of the depredations committed on the high seas upon merchant-vessels" by the "Alabama," and of "the right of reclamation of the Government of the United States for the grievous damage done to the property of their citizens," by reason of the escape of that vessel from British jurisdiction; and which referred, in support of that alleged right, to the treaty of 1794 between Great Britain and the United States, by which (as Mr. Adams inaccurately represented) "all cases of damage previously done by capture of British vessels or merchandise, by vessels originally fitted out in the ports of the United States," were agreed to be referred to a commission, to award "the necessary sums for full compensation." He added, that he had received directions from his Government "to solicit redress for *the national and private injuries* already *thus* sustained."

On the 19th February, 1863; 29th April, 1863; 7th July, 1863; 24th August, 1863; 19th September, 1863, and 23d October, 1863, Mr. Adams presented to Lord Russell a series of definite claims made against the Government of this country by particular American citizens, in respect of ships and property belonging to them, said to have been destroyed by the "Alabama," intimating, in his letter of the 23d October, that his Government "must continue to insist that *Great Britain has made itself responsible for the damages which the peaceful, law-abiding citizens of the United States sustain by the depredations of the vessel called the 'Alabama.'*" He added, (in an important passage containing the first suggestion of arbitration as a mode of thereafter solving the question,) "In repeating this conclusion, however, it is not to be understood that the United States incline to act dogmatically or in a spirit of litigation. They fully comprehend how unavoidably reciprocal grievances must spring up from the divergence of the policy of the two countries in regard to the present insurrection. * * * For these reasons I am instructed to say that they frankly confess themselves unwilling to regard the present hour as the most favorable to a calm and candid examination by either party of the facts or the principles involved in cases like the one now in question. Though indulging a firm conviction of the correctness of their position *in regard to this and other claims*, they declare themselves disposed at all times hereafter, as well as now, to consider in the fullest manner all the evidence and the arguments which Her Majesty's Government may incline to proffer in refutation of it; and, in case of an impossibility to arrive at any common conclusion, I am directed to say there is no fair and equitable form of conventional arbitrament or reference to which they will not be willing to submit. Entertaining these views, I crave permission to apprise your Lordship that I have received directions to continue *to present to your notice claims of the character heretofore advanced*, whenever they arise, and to furnish the evidence on which they rest, as is customary in such cases, in order to guard against possible ultimate failure of justice from the absence of it."

In a later letter, of 31st October, 1863, Mr. Adams (while presenting other similar demands in respect of property destroyed by the "Florida") spoke of "*the claims growing out of the depredations of the 'Alabama' and other vessels issuing from British ports.*"

On the 20th January, 1864, he presented another similar claim by the owners of the "Sea Bride," captured by the "Alabama." And at later dates the particulars were transmitted by him of certain claims made by persons whose property was alleged to have been destroyed by the "Shenandoah."

On the 7th April, 1865, (when the war was considered by him as actually or virtually at an end,) Mr. Adams transmitted to Lord Russell certain reports of "depredations committed upon the commerce of the United States" by the "Shenandoah," and added, "Were there any reason to believe that the operations carried on in the ports of Her Majesty's Kingdom and its dependencies to maintain and extend this systematic depredation upon the commerce of a friendly people had been materially relaxed or prevented, I should not be under the painful necessity of announcing to your Lordship the fact that *my Government cannot avoid entailing upon the Government of Great Britain the responsibility for this damage*," and he proceeded to speak of "the injury that might yet be impending from the part which the British steamer 'City of Richmond' had had in being suffered to transport with impunity from the port of London men and supplies, to place them on board of the French-built steam-ram 'Olinthe,' alias 'Stoerkodder,' alias 'Stonewall,' which had, through a continuously fraudulent process, succeeded in deluding several Governments of Europe, and in escaping from this hemisphere on its errand of mischief to the other." He then went on to complain that, by reason of a series of acts, (*the furnishing of "vessels, armaments, supplies, and men,"*) which he contended to be almost wholly attributable to Great Britain, or to British citizens, the entire maritime commerce of the United States was in course of being transferred, and had already, to a great extent, passed over to Great Britain, whose recognition of the belligerent character of the insurgents he alleged to be the main and original source of all this mischief; adding, "In view of all these circumstances, I am instructed, whilst insisting on the protest heretofore solemnly entered against that proceeding," (*i. e.*, the recognition of Southern belligerency,) "further respectfully to represent to your Lordship that, in the opinion of my Government, the grounds on which Her Majesty's Government have rested their defense against the responsibility incurred in the manner hereinbefore stated, for the evils that have followed, however strong they might have hitherto been considered, have now failed, by a practical reduction of all the ports heretofore temporarily held by the insurgents."

It is to be observed that, although the general injury to the commerce of the United States is largely referred to in this letter, Mr. Adams advances no new claim for compensation, on that or any other account, (except for captures made by the "Shenandoah,") against Her Majesty's Government; he even intimates that the particular claim for the captures by the "Shenandoah" would not then have been made, if his Government could have felt assured that no further operations of the like nature would take place.

This letter led to a prolonged controversial argument, in the course of which (on the 4th May, 1865) Lord Russell observed that he could "never admit that the duties of Great Britain toward the United States were to be measured by the losses which the trade and commerce of the United States might have sustained," and said, "The question, then, really comes to this: Is Her Majesty's Government to assume or be liable to a responsibility for conduct which Her Majesty's Government did all in their power to prevent and to punish? A responsibility which Mr. Adams, on the part of the United States Government, in the case of Portugal, positively, firmly, and justly declined. Have you considered to what this responsibility would amount? Great Britain would become thereby answerable for every ship that may have left a British port and have been found afterwards used by the Confederates as a ship of war; nay, more, for every cannon and every musket used by the Confederates on board any ship of war, if manufactured in a British workshop." To which Mr. Adams replied (20th May, 1865) by a "recapitulation" of nine points, which he said he had desired to embody in his previous arguments. These points (beginning with the recognition of Southern belligerency on the high seas, and alleging this belligerency to have been in fact created, after the recognition, by means derived from Great Britain) mentioned, under the 7th head, "*the burning and destroying on the ocean a large number of merchant-vessels and a very large amount of property belonging to the people of the United States.*"

The 8th and 9th heads were thus worded:

"8. That, in addition to this direct injury, the action of these British built, manned, and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and, to a corresponding extent, enlarging that of Great Britain, thus enabling one portion of the British people to derive an unjust advantage from the wrong committed on a friendly nation by another portion.

"9. *That the injuries thus received* by a country which has, meanwhile, sedulously endeavored to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, *are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification.*" Later on, in the same letter, Mr. Adams also said: "Your Lordship is pleased to observe that you can never admit that the duties of Great Britain toward the United States are to be measured by the losses which the trade and commerce of the United States may have sustained. To which I would ask permission to reply, that no such rule was ever desired. The true standard for the measurement would seem to be framed on the basis of the clear obligations themselves, and the losses that spring from the imperfect performance of them;" and "thus it is that, whatever may be the line of argument I pursue, I am compelled ever to return to the one conclusion: *the nation that recognized a Power as a belligerent before it had built a vessel, and became itself the sole source of all the belligerent character it has ever possessed on the ocean, must be regarded as responsible for all the damage that has ensued from that cause to the commerce of a Power* with which it was under the most sacred of obligations to preserve amity and peace."

It will be seen that, although the general propositions of this letter might be wide enough to include the largest imaginable demands, it nevertheless abstains from putting forward any new claim in a definite or tangible form; and purports rather to recapitulate and adhere to the tenor of the preceding correspondence. And in this sense it was, evidently, understood by Lord Russell, who, in his answer of 30th August, 1865, referred to the suggestion of an arbitration contained in Mr. Adams's former letter of the 23d of October, 1863; and, while declining "either *to make reparation and compensation for the captures made by the 'Alabama,'* or to refer the question to any foreign State," offered a reference to a Commission of "all claims arising during the late civil war," which the two Powers should agree to refer to the Commissioners. And again, on the 14th October, he repeated: "There are, I conceive, many claims upon which the two Powers would agree that they were fair subjects of investigation before Commissioners. But I think you must perceive that *if the United States Government were to propose to refer claims arising out of the captures made by the 'Alabama' and 'Shenandoah'* to the Commissioners, the answer of Her Majesty's Government must be in consistency with the whole argument I have maintained, in conformity with the views entertained by your Government in former times. I should be obliged, in answer to such a proposal, to say: For any acts of Her Majesty's subjects committed out of their jurisdiction and beyond their control, the Government of Her Majesty are not responsible," &c.

On the 21st of October Mr. Adams addressed a long letter, with numerous inclosures, to Lord Russell, with reference to the "Shenandoah," alleging that vessel to have been received by the authorities at Melbourne with knowledge of an illegal equipment in this country; and insisting that, on that account, *Her Majesty's Government assumed a responsibility for all the damage which it had done*, and which, down to the latest accounts, it was still doing, to the peaceful commerce of the United States on the ocean." A particular claim by the owners of a ship captured by the "Shenandoah" was presented with this letter.

In his letter to Lord Clarendon of the 21st November, 1865, Mr. Adams, under the instructions of his Government, declined Lord Russell's proposal for a limited reference to Commissioners of such claims as the two Governments could agree upon. "Adhering," he says, "as my Government does to the opinion *that the claims it has presented*, which His Lordship has thought fit at the outset to exclude from consideration, are just and reasonable, I am instructed to say that it sees now no occasion for further delay in giving a full answer to His Lordship's propositions."

The whole result of this correspondence, down to the change of Administration in this country in 1866, may be thus summed up:

1. That notwithstanding continual complaints, extending over a vast range of subjects, from the recognition of the belligerency of the Southern States downwards, no "claims" against this country were ever defined, formulated, or presented on the part of the United States, except for the specific losses of American citizens arising from the capture of their vessels and property by the "Alabama," "Florida," and "Shenandoah;" and (2) that no such form of expression as "*the Alabama claims*" had ever, down to this time been used to describe even the claims in respect of those captures, much less to comprehend any more vague and indefinite demands of indemnity to the general mercantile or national interests of the United States.

On the accession of Lord Derby to power, Mr. Seward in a dispatch to Mr. Adams, dated the 27th August, 1866, thus defined the "claims" which it had been the object of the United States to press in the preceding correspondence, and of which he now again instructed Mr. Adams to urge the settlement: "You will herewith receive a summary of *claims of citizens of the United States against Great Britain for damages which were suffered by them* during the period of our late civil war and some months thereafter, *by means of depredations upon our commercial marine, committed on the high seas by the 'Sumter,' the 'Alabama,' the 'Florida,' the 'Shenandoah,' and other ships of war*, which were built, manned, armed, equipped, and fitted out in British ports, and dispatched therefrom by or through the agency of British subjects, and which were harbored, sheltered, provided, and furnished, as occasion required, during their devastating career, in ports of the realm, or in ports of British Colonies in nearly all parts of the globe. *The table is not supposed to be complete, but it presents such a recapitulation of the claims as the evidence so far received in this Department enables me to furnish. Deficiencies will be supplied hereafter.* Most of *the claims* have been from time to time brought by yourself, as the President directed, to the notice of Her Majesty's Government, and made the subject of earnest and continued appeal. That appeal was intermitted only when Her Majesty's Government, after elaborate discussions, refused *either to allow the claims or to refer them* to a Joint Claims Commission, or to submit the question of *liability therein* to any form of arbitration. The United States, on the other hand, have all the time insisted upon *the claims* as just and valid. This attitude has been, and doubtlessly continues to be, well understood by Her Majesty's Government. The considerations which inclined this Government to suspend for a time the pressure of *the claims* upon the attention of Great Britain, are these: The political excitement in Great Britain, which arose during the progress of the war, and which did not immediately subside at its conclusion, seemed to render that period somewhat unfavorable to a deliberate examination of the very grave questions which *the claims* involve, &c. * * The principles upon which *the claims* are asserted by the United States have been explained by yourself in an elaborate correspondence with Earl Russell and Lord Clarendon. In this respect, there seems to be no deficiency to be supplied by this Department. * * * *It is the President's desire that you now call the attention of Lord Stanley to the claims* in a respectful but earnest manner, and inform him that, in the President's judgment, *a settlement of them has become urgently necessary* to a re-establishment of entirely friendly relations between the United States and Great Britain. *This Government, while it thus insists upon these particular claims*, is neither desirous nor willing to assume an attitude unkind or unconciliatory toward Great Britain. If, on her part, there are claims either of a commercial character, or of boundary, or of commercial or judicial regulation, which Her Majesty's Government esteem important to bring under examination at the present time, the United States would, in such case, be not unwilling to take them into consideration *in connection with the claims which are now presented on their part*, and with a view to remove at one time, and by one comprehensive settlement, all existing causes of misunderstanding."

Mr. Seward proceeded to recommend, in support of these claims, the use of the same general arguments, (including prominently the alleged effect of the recognition of Southern belligerency, and the general injury to the national commerce of the United States,) which had been previously so often employed Mr. Adams. He added: *The claims upon which we insist are of large amount. They affect the interest of many thousand* *citizens of the United States*, in various parts of the Republic. The justice of *the claims* is sustained by the universal sentiment of the people of the United States.”

The claims specified in the inclosure to this dispatch (which is headed, “*Summary of claims of citizens of the United States against Great Britain*”) relate exclusively to losses sustained by the owners and insurers of divers ships and cargoes captured by the “Alabama,” the “Shenandoah,” the “Florida,” and the “Georgia,” respectively.

This dispatch having been communicated by Mr. Adams to Lord Stanley, his Lordship, through Sir F. Bruce, (Lord Stanley to Sir F. Bruce, 30th November, 1866,) called attention to what he supposed to be an accidental error of Mr. Seward, in mentioning the “Sumter;” which “did not proceed from a British port, but was an American vessel, and commenced her career by escaping from the ‘Mississippi.’” Then, after dealing with Mr. Seward’s general arguments, and declining to abandon the ground taken by former Governments. “so far as to admit the liability of this country for the claims then and now put forward,” he expressed his sense of the “inconvenience which arose from the existence of unsettled claims of this character between two powerful and friendly Governments,” and his willingness to adopt the principle of arbitration, provided that a fitting arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. He objected to refer to arbitration the question of the alleged premature recognition of the Confederate States as a belligerent; saying “the act complained of, *while it bears very remotely on the claims now in question*, is one as to which every State must be held to be the sole judge of its duty.” In another dispatch to Sir F. Bruce, of the same date, he says, “I have confined myself exclusively to the consideration of *the American claims, put forward in Mr. Seward’s dispatch to Mr. Adams of the 27th August, and arising out of the depredations committed on American commerce by certain cruisers* of the Confederate States. But, independently of these claims, *there may*, for aught Her Majesty’s Government know, *be other claims on the part of American citizens*, originating in the events of the late civil war, while there certainly are very numerous British claims arising out of those events, which it is very desirable should be inquired into and adjusted between the two countries. * * * The Government of the United States have brought before that of Her Majesty’s *one class of claims of a peculiar character, put forward by American citizens*, in regard to which you are authorized by my other dispatch of this date to make a proposal to Mr. Seward; but *Her Majesty’s Government have no corresponding class of claims to urge upon the attention of the American Government*.” And he, presently afterwards, speaks of “*the special American claims*, to which my other dispatch alludes,” an expression which is adopted and repeated by Mr. Seward, in his reply to Sir F. Bruce, (12th January, 1867.)

In a further dispatch to Mr. Adams (12th January, 1867) Mr. Seward justifies and reaffirms the sentence in his letter of the 27th August, in which the “Sumter” was mentioned, as “substantially correct,” on the ground that that vessel had been admitted into the British ports of Trinidad and Gibraltar, and “allowed to be sold” (in the latter port) “to British buyers for the account and benefit of the insurgents;” and afterward received under the British flag, at Liverpool. His practical conclusion is that “the United States think it not only easier, but more desirable, that Great Britain should acknowledge and satisfy *the claims for indemnity which we have submitted* than it would be to find an equal and wise arbitrator who would consent to adjudicate them. If, however, Her Majesty’s Government, for reasons satisfactory to them, should prefer the remedy of arbitration, the United States would not object. The United States, in that case, would expect to refer the whole controversy, just as it is found in the correspondence which has taken place between the two Governments, with such further evidence and arguments as either party may desire, without imposing restrictions, conditions, or limitations upon the umpire, and without waiving any principle or argument on either side. They cannot consent to waive any question upon the consideration that it involves a point of national honor; and, on the other hand, they will not require that any question of national pride or honor shall be expressly ruled and determined as such.”

To this Lord Stanley (9th March, 1867, to Sir F. Bruce) replied: “To such an extensive and unlimited reference Her Majesty’s Government cannot consent, for this reason, among others, that it would admit of, and indeed compel, the submission to the arbiter of the very question which I have already said they cannot agree to submit. *The real matter at issue between the two Governments*, when kept apart from collateral considerations, *is whether, in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen*, the course pursued by the British Government, and by those who acted under its authority, was such as would involve *a moral responsibility* on the part of the British Government *to make good, either in whole or in part, the losses of American citizens. This is a plain and simple question, easily to be considered by an arbiter, and admitting of solution without raising other and wider issues;* and on this question Her Majesty’s Government are fully prepared to go to arbitration, with the further proviso that, if the decision of the arbiter is unfavorable to the British view, *the examination of the several claims of citizens of the United States shall be referred to a Mixed Commission*, *with the view to the settlement of the sums to be paid on them.*" His Lordship then repeats that, deeming it important "that the adjudication of this question should not leave *other questions of claims, in which their respective subjects or citizens may be interested,* to be matter of further disagreement between the two countries, Her Majesty's Government think it necessary, in the event of an understanding being come to between the two Governments as to the manner in which *the special American claims* (*which have formed the subject of the correspondence of which his present dispatch was the sequel*) should be dealt with, that, under a Convention to be separately and simultaneously concluded, the general claims *of the subjects and citizens of the two countries* arising out of the events of the late war should be submitted to a Mixed Commission," &c. "Such, then," (he concluded,) "is the proposal which Her Majesty's Government desire to submit to the Government of the United States; *limited reference to arbitration in regard to the so-called 'Alabama' claims,* and adjudication by means of a Mixed Commission of general claims."

The first occasion on which these words, "*the so-called 'Alabama' claims*" occurred in the course of the whole correspondence was shortly before the date of this letter; in a letter from Mr. Seward to Sir F. Bruce (12th January, 1867) in which he spoke of Lord Stanley's previous dispatch of the 30th November, 1866, as setting forth "the views of Her Majesty's Government *of the so-called 'Alabama' claims presented in my dispatch to Mr. Adams,*" and as concluding with a proposal of "the principle of arbitration, attended with some modification in regard to *those claims.*" Lord Stanley himself had spoken of "the settlement of *the 'Alabama' and other claims,*" by means of the proposals which he had authorized Sir F. Bruce to make, in a note to Sir F. Bruce, dated the 24th January, 1867. The same phrase, "Alabama claims," had also been used on one or two occasions, with reference to the same proposed settlement, in articles which previously appeared in some of the English newspapers during the autumn of 1866.

Lord Stanley's letter of the 9th March, 1867, was, by his direction, read to, and a copy left with, Mr. Seward; and on the 2d May, 1867, Mr. Adams communicated to Lord Stanley the substance of Mr. Seward's reply, saying that "the Government of the United States adhere to the view which they formerly expressed as to the best way of dealing with *these claims.* They cannot, consequently, consent to a special and peculiar limitation of arbitrament in regard to *the 'Alabama' claims,* such as Her Majesty's Government suggest. They cannot give any preference to *the 'Alabama' claims* over others, in regard to the form of arbitrament suggested; and, while they agree that all mutual claims which arose during the civil war *between citizens and subjects of the two countries* ought to be amicably and speedily adjusted, they must insist that they must be adjusted by one and the same form of tribunal, with like and the same forms, and on principles common to all." (Lord Stanley to Sir F. Bruce, 2d May, 1867.)

The language of this communication led Lord Stanley to think that his proposal might, perhaps, have been understood as applying only "to the claims arising out of the proceedings of the Alabama, to the exclusion of those arising out of the like proceedings of the Florida, Shenandoah, and Georgia." He therefore wrote to Sir F. Bruce on the 24th of May, 1867, saying, "It is important to clear up this point; and you will, therefore, state to Mr. Seward that *the offer to go to arbitration was not restricted to the claims arising out of the proceedings of the 'Alabama,' but applied equally to those arising out of the like proceeding of the other vessels that I have named.*" Referring again to the terms of his dispatch of the 9th of March, he then directs Sir F. Bruce to inform Mr. Seward that "*there was no intention on the part of Her Majesty's Government to give any preference,* in regard to the form of arbitrament, *to the 'Alabama' claims over claims in the like category,*" thinking that there must have been some misapprehension on this point, because "the question of disposing of general claims, in contradistinction to *the specific claims arising out of the proceedings of the 'Alabama,' and vessels of that class,* had not hitherto been matter of controversy between the two Governments." Shortly afterward, having spoken of "*the first or 'Alabama' class of claims,*" he says, "*The one class, or the specific claims, such as those arising out of the proceedings of the 'Alabama' and such vessels,* depend for their settlement on the solution of what may be called an abstract question, namely, whether, in the matters connected with *the vessels, out of whose depredations the claims of American citizens have arisen,* the course pursued by the British Government, and those who acted under its authority, was such as would involve a moral responsibility on the part of the British Government *to make good, either in whole or in part, the losses of American citizens,*" and he repeats his former offer of separate modes of arbitration, as to the two classes of claims, viz, "*those of the 'Alabama' class,*" or "*the 'Alabama' and such like claims,*" and the general claims of *the citizens* of both countries.

Further discussion ensued. Mr. Seward, on the 12th of August, 1867, (in a dispatch communicated by Mr. Adams,) said that he understood the British offer "to be at once comprehensive and sufficiently precise to conclude *all the claims of American citizens for depredations on their commerce during the late rebellion, which had been the subject of complaint on the part of the Government of the United States,* but that the Government of the United States would deem itself at liberty to insist before the arbitrator that the actual proceedings and relations of the British Government, its officers, agents, and subjects, toward the United States, in regard to the rebellion and the rebels, as they occurred during that rebellion, were among the matters which were connected with *the vessels whose depredations were complained of.*" He then objected to the constitution of two different tribunals, "one an Arbiter to determine the question of the moral responsibility of the British Government *in regard to the vessels of the 'Alabama' class*, and the other a Mixed Commission to adjudicate the so-called general claims on both sides," and said that "in every case" his Government "agreed only to unrestricted arbitration." (Lord Stanley to Sir F. Bruce, 10th September, 1867.)

Lord Stanley, in his reply of the 16th November, (through Mr. Ford, 16th November, 1867,) used further arguments in support of the British proposal, designating throughout the special class of claims as "*the so-called Alabama claims.*"

After some intermission the correspondence was resumed by a dispatch of Mr. Seward to Mr. Adams, expressing his wish "that some means might be found of arranging the differences now existing between England and the United States," which was communicated to Lord Stanley on the 15th February, 1868. The questions causing these differences were thus enumerated by Mr. Seward: "1st. *The Alabama claims.* 2d. The San Juan Question. 3d. The Question of Naturalized Citizens, their rights and position. 4th. The Fishery Question;" and he suggested that "the true method of dealing with all these matters was by treating them jointly, and endeavoring, by means of a Conference, to settle them all." (Lord Stanley to Mr. Thornton, 15th February, 1868.)

Negotiations followed, in the first instance directed to the third and second of these four questions. On the 20th October, Mr. Reverdy Johnson (who had now succeeded Mr. Adams) called on Lord Stanley "to discuss with me" (says Lord Stanley, in a dispatch of 21st October, 1868, to Mr. Thornton) "the question of *the Alabama claims,*" proposing a Mixed Commission, to whom "*all the claims on both sides*" should be referred. Lord Stanley "pointed out the inapplicability of this method of proceeding, as applied to the *Alabama claims and others of the same class,*" and suggested, as arbitrator, the head of a friendly State. As to the recognition of belligerency, he said that Her Majesty's Government could not depart from the position which they had taken up, "but that he saw no impossibility in so framing the reference as that by mutual consent, either tacit or express, the difficulty might be avoided."

On the 10th November, 1868, a Convention was accordingly signed (subject to ratification) between Lord Stanley, on the part of Her Majesty, and Mr. Johnson, on the part of the United States. By Article I of this Convention, it was agreed that "all *claims of subjects of Her Britannic Majesty* upon the Government of the United States, *and all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty*, which might have been presented to either Government for its interposition with the other since the 26th of July, 1853, * * and which yet remain unsettled, as well as any other such claims which might be presented within the time specified in Article III," (viz, within six months from the day of the first meeting of the Commissioners, unless they or the Arbitrator or Umpire should allow a further time,) should be referred to four Commissioners, with provision for an arbitration or umpirage, in case of their being nable to come to a decision on any claim. Article IV was in these terms: "The Commissioners shall have power to adjudicate upon *the class of claims referred to in the official orrespondence between the two Governments as the 'Alabama' claims;* but before any of *such laims* is taken into consideration by them, the two High Contracting Parties shall fix pon some Sovereign or Head of a friendly State as an Arbitrator in respect of *such laims*, to whom *such class of claims* shall be referred, in case the Commissioners shall be nable to come to a unanimous decision upon the same."

Article VI provided that "with regard to *the before-mentioned 'Alabama' class of claims,* either Government shall make out a case in support of its position, nor shall any per- ion be heard for or against any such claim. The official correspondence which has lready taken place between the two Governments respecting the questions at issue hall alone be laid before the Commissioners, and (in the event of their not coming to unanimous decision, as provided in Article IV) then before the Arbitrator, without rgument, written or verbal, and without the production of any further evidence. The ommissioners, unanimously, or the Arbitrator, shall, however, be at liberty to call for rgument or further evidence, if they or he shall deem it necessary."

Down to this point it is manifest that, in all the communications between the two ountries the claims known and referred to as "the 'Alabama' claims" were *claims for irect damage suffered by American citizens* through the acts of the "Alabama" and similar essels, and such claims only.

When the terms of this convention became known in America, the Government of the nited States desired certain alterations to be made in it, none of which had any tend- ncy either to enlarge the category of the claims in question, or to change the sense r application of the phrase "the 'Alabama' claims." The correspondence as to the odifications desired continued till January, 1669, when (Her Majesty's Government aving agreed to the alterations then proposed by Mr. Seward) the amended Conven- ion of the 14th of January, 1869, was signed by Lord Clarendon and Mr. Reverdy ohnson.

The correspondence of this period throughout maintains and confirms the sense which the words "the 'Alabama' claims," or "the so-called 'Alabama' claims," had now acquired. In Lord Stanley's dispatch of December 8, 1868, to Mr. Thornton, memoranda of several consultations and conferences with Mr. Reverdy Johnson, prior to the signature of the Convention of the 10th November, were inclosed. "*The 'Alabama' claims;*" "*the 'Alabama' and other similar claims;*" "*the so-called 'Alabama' and other similar claims,*" and "*the so-called 'Alabama' claims, and others included under the same head,*" are the several varieties of phrase used in these memoranda to describe the subject, ultimately defined in the Fourth Article of that Convention as "*the class of claims referred to in the official correspondence between the two Governments as the 'Alabama' claims.*" In a letter of the 12th November, 1868, Mr. Reverdy Johnson, while communicating a telegraphic dispatch from Mr. Seward, (in which a general approval of the terms of the Convention, afterwards modified in various important points, was accompanied by a stipulation that Washington, and not London, should be the place of meeting of the Commissioners, to which Her Majesty's Government assented,) said, "I think the change will be disadvantageous to *the 'Alabama' claimants.*" In a dispatch of 30th November, 1868, Mr. Thornton stated the objections then urged by Mr. Seward to the Convention; in which Mr. Seward also spoke of the claims mentioned in Article IV as "*the 'Alabama' and war claims,*" and "*the 'Alabama' claims,*" and of the persons interested in those claims as "*the 'Alabama' claimants.*" Mr. Seward's dispatch of the 27th November to Mr. Reverdy Johnson (communicated to Lord Clarendon on the 22d December) repeatedly employs the same language. He says, "The United States are obliged to disallow this Article IV. The United States have no objection to the first clause of the Article, which declares that the Commissioners shall have power to adjudicate upon *the so-called 'Alabama' claims.* Indeed, the United States would willingly retain this clause, because of its explicitness with regard to *the 'Alabama' claims.* They did not, in their instructions to you, insist upon such a special direction in regard to *the 'Alabama' claims;* but only because they thought that special mention of *these claims* might be deemed inconvenient on the part of Her Majesty's Government; while it could not admit of doubt that *these so-called 'Alabama' claims were plainly included, as well as all other claims of citizens of the United States,* in the comprehensive description of claims contained in Article I. Secondly, it is to be considered by Her Majesty's Government that *the 'Alabama' class of claims constitute the largest and most material of the entire mass of claims of citizens of the United States against Great Britain, which it is the object of the Convention to adjust.* Upon *the 'Alabama' claims,* as well as all others, this Government is content to obtain, and most earnestly desires, a perfectly fair, equal, and impartial judicial trial and decision. This Government has always explicitly stated that it asks no discrimination in favor of *the 'Alabama' claims,* and can admit of no material discrimination against them in the forms of trial and judgment; but must, on the contrary, have them placed on the same basis as all other claims." * * * "It probably would conduce to no good end to set forth, on this occasion, the reasons why *the 'Alabama' claims, more than any other class of international claims existing between the two countries, are the very claims against which the United States cannot agree to, or admit of any prejudicial discrimination.* To present these reasons now would be simply to restate arguments which have been continually presented by this Department in all the former stages of this controversy; while it is fair to admit that these reasons have been controverted with equal perseverance by Her Majesty's Department for Foreign Affairs."

The general result of this correspondence was that, in the Convention of the 14th January, 1869, other provisions were substituted for those of the IVth and VIth Articles of the Convention of 10th November, 1868, to which the United States Government had objected; and the special mention of the "Alabama" was transferred from those Articles to Article I, which provided "that all claims on *the part of subjects of Her Britannic Majesty* upon the Government of the United States, and *all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty, including the so-called 'Alabama' claims,* which may have been presented to either Government for its interposition with the other since the 26th of July, 1853, * * * and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article III of this Convention, whether or not arising out of the late civil war in the United States, shall be referred," &c.

On the 22d February, 1869, Mr. Thornton reported to Lord Clarendon the Resolution of a majority of the Committee on Foreign Relations of the Senate of the United States, recommending the Senate not to ratify this Convention, Mr. Sumner, who moved the resolution, having said "that *it covered none of the principles* for which the United States had always contended." He also inclosed a Resolution of the Legislature of Massachusetts, "protesting against the ratification of any Convention which did not admit *the liability of England for the acts of the 'Alabama' and her consorts.*"

On the 22d March, 1869, Mr. Reverdy Johnson (without any special instructions) called upon Lord Clarendon, and proposed a further change in the Ist Article of the Convention, which he thought "would satisfactorily meet the objections entertained by the Senate to the Convention, and would secure its ratification by that body." This new change consisted in the introduction of "*all claims on the part of Her Britannic Majesty's Government upon the Government of the United States, and all claims on the part of the Government of the United States upon the Government of Her Britannic Majesty,*" as well as all claims of subjects and citizens, as to which the language of the Convention would have remained unaltered. Lord Clarendon reports what then took place in his dispatch to Mr. Thornton, (March 22, 1869.) "I remarked to Mr. Johnson that his proposal would introduce an entirely new feature in the Convention, which was for the settlement of claims between the subjects and citizens of Great Britain and the United States, but that *the two Governments not having put forward any claims on each other,* I could only suppose that his object was to favor the introduction of some claim by the Government of the United States for injury sustained on account of the policy pursued by Her Majesty's Government. Mr. Reverdy Johnson did not object to this interpretation of his amendment, but said that *if claims to compensation on account of the recognition by the British Government of the belligerent rights of the Confederates were brought forward by the Government of the United States, the British Government might, on its part, bring forward claims to compensation for damages done to British subjects by American blockades, which, if the Confederates were not belligerents, were illegally enforced against them.*" Lord Clarendon, then, after referring to the proofs which Her Majesty's Government had given of their willingness to make any reasonable amendments to meet the wishes of the United States, and to the difference in the course of proceeding adopted in America, said "that it did not seem proper for Her Majesty's Government to take any further step in the matter, or to adopt any amendment to the Convention, even if it had been free from objection."

Mr. Reverdy Johnson (still without authority) renewed his proposition, in a letter to Lord Clarendon, dated 25th March, 1869, in which he stated that he had reason to believe that the objection of the Senate of the United States to the Convention consisted "in the fact that the Convention provided only for the settlement by arbitration of *the individual claims of British subjects and American citizens upon the respective Governments, and not for any claims which either Government, as such, might have upon the other.*" "*My Government,*" he added, "*believe,* as I am now advised, that *it has a claim of its own upon Her Majesty's Government, because of the consequences resulting from a premature recognition of the Confederates during our late war, and* from the fitting out of the 'Alabama' and other similar vessels in Her Majesty's ports, *and* from their permitted entrance into other ports to be refitted and provisioned during their piratical cruise. *The existence of such a claim* makes it as necessary that its ascertainment and adjustment shall be provided for as the individual claims growing out of the same circumstances."

The United States Government, down to this time, had insisted that the new Convention ought strictly to follow the precedent of the Convention of 1853, which contained no provision for any species of public claims. Lord Clarendon, therefore, on the 8th of April, 1869, thus answered Mr. Reverdy Johnson: "Her Majesty's Government could not fail to observe that this proposal involved a wide departure from the tenor and terms of the Convention of 1853, to which, in compliance with your instructions, you have constantly pressed Her Majesty's Government to adhere, as necessary to insure the ratification of a new Convention by the Senate of the United States. No undue importance is attached to this deviation; but I beg leave to inform you that, in the opinion of Her Majesty's Government, it would serve no useful purpose now to consider any amendment to a Convention which gave full effect to the wishes of the United States Government, and was approved by the late President and Secretary of State, who referred it for ratification to the Senate, where it appears to have encountered objections, the nature of which has not been officially made known to Her Majesty's Government."

Mr. Reverdy Johnson, on the 9th of April, replied that "the design of the Convention of 1853 was to settle all claims which either Government, in behalf of its own citizens or subjects, might have upon the other. * * * * *At that time neither Government, as such, made a demand upon the other. But that, as my proposition assumes, is not the case now. The Government of the United States believes that it has, in its own right, a claim upon the Government of Her Majesty.* In order, therefore, to a full settlement of all existing claims, it is necessary that *the one which my Government makes, and any corresponding claim which Her Majesty's Government may have upon the United States,* should be included within the Convention of the 14th January, 1869. *My instructions, to which your Lordship refers, were to provide for the settlement of the claims mentioned in such instructions* by a Convention upon the model of the one for February, 1853. *That I did not suggest in the negotiations which led to the Convention of January the including within it any Governmental claims was because my instructions only referred to the individual claims of citizens and subjects.* I forbear to speculate as to the grounds upon which my instructions were *so limited.*"

Her Majesty's Government adhered to their decision not to entertain at all the suggestion thus made by Mr. Reverdy Johnson; and they intimated (in correction of an erroneous inference drawn by him from the concluding sentence of Lord Clarendon's letter of the 8th April) that it was not to be supposed that this proposal would be acceptable to Her Majesty's Government, even if it were made or repeated under positive instructions from the United States Government, and with the prospect of terminating the entire controversy. (Lord Clarendon to Mr. Johnson, 15*th April*, 1869; and Mr. Johnson's reply, 16*th April*, 1869.)

From this incident in the history of the negotiations the following conclusions of fact result:

1. That Mr. Reverdy Johnson's instructions from his Government never extended to the assertion or settlement of any other claims than those of individual citizens of the United States against Great Britain.

2. That in suggesting (for the first time) the possible existence of public claims on behalf of his Government, he acted without authority.

3. That no such public claims as those of which the existence was suggested by him had ever been presented or notified; nor were, even then, in any manner defined.

4. That the public claims, of which the possible existence was so suggested, were not claims "growing" or arising (simply) "out of the acts of" the "Alabama," or any other vessels; but claims "because of the consequences resulting from a premature recognition of the Confederates during the war, AND from the fitting out of the 'Alabama' and other similar vessels in Her Majesty's ports, AND from their permitted entrance into other ports."

5. That the words "*Alabama Claims*" (or any equivalent form of expression) were never made use of, nor was their use ever proposed to be varied or extended so as to comprehend this new class of (suggested) public claims.

6. That the idea of a *one-sided* reference of such supposed public claims of the Government of the United States only was never for a moment advanced or entertained: on the contrary, the essential condition of Mr. Johnson's proposal was that it should also be open to Her Majesty to advance any public claims whatever which they might conceive themselves to have against the Government of the United States—a claim for injury to British interests, by the assertion and exercise of belligerent rights against British commerce, being expressly anticipated, as a probable or possible set-off to any claim on the part of the United States, founded upon the denial of a belligerent status, at any given period, to the Confederates.

7. That, although offered under these conditions, the proposal was simply, and without a discussion, declined by Her Majesty's Government.

It was in Mr. Sumner's speech, at the meeting of the United States Senate, which refused to ratify the Convention of the 14th January, 1869, that the first conception of public claims, of the nature and magnitude of those now advanced in the "Case" of the United States, was made known to the world.. His argument on this head was thus summed up by Mr. Thornton, (19th April, 1869, to Lord Clarendon:) Your lordship will perceive that the sum of Mr. Sumner's assertions is, that England insulted the United States by the premature, unfriendly, and unnecessary Proclamation of the Queen, enjoining neutrality on Her Majesty's subjects; that she owes them an apology for this step; that *she is responsible for the property destroyed by the 'Alabama' and other Confederate cruisers, and even for the remote damage to American shipping interests, including the increase of the rate of insurance; that the Confederates were so much assisted by being able to get arms and ammunition from England, and so much encouraged by the Queen's Proclamation, that the war lasted much longer than it would otherwise have done, and that we ought therefore to pay imaginary additional expenses imposed upon the United States by the prolongation of the war.*" Mr. Sumner himself did not affect to represent the latter portion, at all events, of his suggested demand as "growing out of the acts of" the "Alabama," or of any other particular vessels; and Mr. Thornton's comment upon the whole of it shows very clearly the impossibility of ascribing to the acts of any particular vessels alleged to have been fitted out from British ports, either the whole or any ascertainable part of the general losses sustained by American commerce during the war, or even distinguishing between such losses of that kind as were real and those which were apparent only.

So far no step was taken by the United States Government to adopt Mr. Sumner's views or to advance claims corresponding to them. On the 10th of June, 1869, Mr. Motley renewed to Lord Clarendon the declaration of the wish of his Government "that existing differences between the two countries should be honorably settled, and that the international relations should be placed on a firm and satisfactory basis," which Lord Clarendon of course reciprocated. Then, after adverting to other subjects, he said that "the Claims Convention had been published prematurely, owing to some accident which he could not explain; and that consequently, long before it came under the notice of the Senate, it had been unfavorably received by all classes and parties in the United States. The time at which it was signed was thought most inopportune, as the late President and his Government were virtually out of office, and their successors could not be committed on this grave question. The Convention was further objected to *because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other;*" and, "lastly, that it settled no question and laid down no principle. These were the chief reasons which had led to its rejection by the Senate;" and Mr. Motley added "that although they had not been at once and explicitly stated, no discourtesy to Her Majesty's Government was thereby intended."

On the 25th of September, 1869, Mr. Fish revived the whole subject of the controversies between the two Governments within its widest range in a long and elaborate dispatch to Mr. Motley, in which he referred (among other things) to the responsibility of the British Government for (at least) "*all the depredations committed by the 'Alabama'*" as indisputable. He stated, toward the end, the President's concurrence with the Senate in disapproving the Convention of the 14th January, 1869, thinking (in addition to general reasons left to be inferred from the general arguments of the dispatch) that "the provisions of the Convention were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress." He added: "The President is not yet prepared to pronounce on the question of the indemnities which he thinks due by Great Britain to individual citizens of the United States for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain. *Nor is he now prepared to speak of the reparation which he thinks due by the British Government for the larger account of the vast national injuries it has inflicted on the United States. Nor does he attempt now to measure the relative effect of the various causes of injury; as, whether by untimely recognition of belligerency; by suffering the fitting out of rebel cruisers; or by the supply of ships, arms, and munitions of war to the Confederates; or otherwise, in whatsoever manner.* * * * All these are subjects of future consideration, which, when the time for action shall come, the President will consider with sincere and earnest desire that all differences between the two nations may be adjusted amicably and compatibly with the honor of each, and to the future promotion of concord between them; to which end he will spare no efforts within the range of his supreme duty to the rights and interests of the United States. * * * At the present stage of the controversy, the sole object of the President is to state the position and maintain the attitude of the United States in the various relations and aspects of this grave controversy with Great Britain. It is the object of this paper (which you are at liberty to read to Lord Clarendon) to state calmly and dispassionately, with a more unmeasured freedom than might be used in one addressed directly to the Queen's Government, what this Government seriously considers the injuries it has suffered. *It is not written in the nature of a claim, for the United States now make no demand against Her Majesty's Government on account of the injuries they feel they have sustained.*"

Lord Clarendon, understanding this dispatch as intended to revive, and to prepare the way for a new settlement of, the claims previously advanced, spoke of it in his answering dispatch to Mr. Thornton (November 6, 1869) as "a dispatch from Mr. Fish on *the 'Alabama' claims.*" That it was not intended to extend, and that it had not the effect of extending, the signification of that term, as used in the previous correspondence, is plain, (1) from the fact that Mr. Fish expressly disclaimed for his dispatch the office or effect of *making* any new *claim* or *demand;* (2) that it reserved for future consideration the question of reparation for the (supposed) "national injuries" inflicted by the British Government on the United States; and (3) that it "declined to measure the relative effect of the various (alleged) causes of injury;" the "suffering the fitting-out of rebel cruisers" being only one of three causes enumerated. Lord Clarendon simply contented himself with replying that "Her Majesty's Government could not make any new proposition, or run the risk of another unsuccessful negotiation, until they had information more clear than that which was contained in Mr. Fish's dispatch respecting the basis upon which the Government of the United States would be disposed to negotiate." But, in a paper of observations upon the arguments in this dispatch, which he at the same time (6th November, 1869) transmitted to Mr. Thornton, to be communicated to Mr. Fish, he remarked, under the head of "*Indirect injury to American commerce,*" "*This allegation of national, indirect, or constructive claims was first brought forward officially by Mr. Reverdy Johnson, in his attempt to renew negotiations on the Chinese Convention in March last.* Mr. Thornton has shown the difficulty there would be in computing the amount of the claim, even if it were acknowledged, in a dispatch in which he mentions the continual decrease of American tonnage. This is partly, no doubt, to be ascribed to the disturbance of commercial relations consequent on a long war, partly to the fact that many vessels were nominally transferred to British owners during the war to escape capture. * * * * Is not, however, a good deal of it to be attributed to the high American tariff, which makes the construction of vessels in American ports more expensive than ship-building in England, and has thereby thrown so large a proportion of the carrying trade into English hands? There must be some such cause for it, or otherwise American shipping would have recovered its position since the war, instead of continuing to fall off." * * * * And with regard to "*the claims for vast national injuries,*" he noticed that Professor Woolsey, the eminent American jurist, had repudiated them as untenable, &c.

This closes the narrative of the communications between the two Governments, anterior to those which had for their immediate result the negotiation of the Treaty of Washington. They show conclusively: (1) that, down to the 26th of January, 1871, (when Her Majesty's Government, through Sir E. Thornton, proposed to Mr. Fish the appointment of a Joint High Commission to settle the Fishery Question, and all other questions affecting "the relations of the United States toward Her Majesty's possessions in North America,") no *actual claim* had been formulated or notified on the part of the United States against Her Majesty's Government, except for the capture or destruction of property of individual citizens of the United States by the "Alabama," and other similar vessels; (2) that the Government of the United States had, in Mr. Fish's dispatch of the 25th of September, 1869, for the first time intimated to the Government of this country that they considered there might be grounds for some claims of a larger and more public nature, though they purposely abstained at that time from making them; (3) that the grounds indicated, as those on which any such larger and more public claims might be made, were not limited to the acts of the Alabama and other similar vessels, or to any mere consequence of those acts; and (4) that the expression "*the 'Alabama' claims*" had always been used, in the correspondence between the two Governments, to describe the claims of American citizens on account of their own direct losses by the depredations of the Alabama "and other similar vessels;" and had never been employed to describe, or as comprehending, any public or national claims whatever of the Government of the United States.

It was under these circumstances that Mr. Fish, on the 30th of January, 1871, informed Sir E. Thornton that the President thought "that the removal of the differences which arose during the rebellion in the United States, and which has existed since then, *growing out of the acts committed by the several vessels, which had given rise to the claims generically known as the 'Alabama' claims*, would also be essential to the restoration of cordial and amicable relations between the two Governments." Sir E. Thornton replied (1st February, 1871) that he was authorized by Earl Granville to state that "it would give Her Majesty's Government great satisfaction if *the claims commonly known by the name of the 'Alabama' claims* were submitted to the consideration of the same High Commission, by which Her Majesty's Government had proposed that the questions relating to British possessions in North America should be discussed, provided *that all other claims, both of British subjects and citizens of the United States*, arising out of acts committed during the recent civil war in this country, were *similarly* referred to the same Commission." Mr. Fish, in answer to this announcement, on the 3d of February, 1871, after citing the exact terms of Sir E. Thornton's letter, expressed the satisfaction with which the President "had received the intelligence that Earl Granville had authorized him to state that Her Majesty's Government had accepted the views of the United States Government as to the disposition to be made of *the so-called 'Alabama' claims;*" and that "if there be other and further claims *of British subjects or of American citizens* growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission."

Mr. Fish, therefore, and Sir E. Thornton agreed in describing, by the several forms of expression, "*the claims generically known as the 'Alabama' claims*," "*the claims commonly known by the name of the 'Alabama' claims*," "*the 'Alabama' claims*," and "*the so-called 'Alabama' claims*," one and the same subject-matter. What this was is proved, not only by the previous use of the same or similar terms, but also by the fact that, if these words had been now intended to include indefinite public or national claims of the United States Government against Great Britain, and not merely those claims for direct losses which had been previously presented or notified, and any others *ejusdem generis*, it must of necessity have followed (according to the suggestions which had been made by Mr. Reverdy Johnson, and afterward by Mr. Motley) that any counter claims which the Government of Great Britain might have thought fit to advance, on public or national grounds, against the Government of the United States, must have been in like manner provided for. But the only other claims provided for were those of subjects of Great Britain and citizens of the United States.

In strict conformity with this view, Lord Granville, when enumerating in his instructions to Her Majesty's High Commissioners (9th February, 1871) the principal subjects to which their attention would be directed, described these claims as "the claims on account of the Alabama, Shenandoah, and certain other cruisers of the so-styled Confederate States;" saying, "Under this head are comprised the claims against Great Britain for damages sustained by the depredations of the Alabama, Shenandoah, and Georgia, the vessels which were furnished on account of the Confederate States, and armed outside of British jurisdiction, and the Florida, which, though built in England, was armed and equipped in the port of Mobile."

The same, or the equivalent words, therefore, as often as they are used in the Protocols of the Commissioners and in the Treaty of Washington itself, ought, upon ordinary principles of construction, to be understood as bearing the same sense. And this seems to be made more clear by the exclusion from the reference of any claims of this country or of the people of Canada on account of the proceedings of the Fenians in the United States. There might certainly have been national claims of Great Britain arising out of those proceedings, (in addition to any particular losses by Canadian subjects,) which could not possibly have been excluded on any just or intelligible principle, if indefinite claims for public or national losses had been intended to be left open to the Government of the United States.

On a careful examination of the language of the Protocols and the Treaty, nothing is found at variance with this conclusion, while very much is found to confirm it.

The 36th Protocol, drawn up after the Commissioners had agreed upon all the terms of the Treaty, for the purpose of recording (so far as they thought it necessary or desirable) the history of their proceedings, begins by stating the proceedings at their first conference, on the 8th March, 1871. On that occasion the American Commissioners spoke (1) of the feeling of the United States, "that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests *by the course and conduct of Great Britain during the recent rebellion in the United States;*" (2) *of* "*the history of the Alabama and other cruisers*, which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her Colonies, *and of the operations of those vessels, as showing* (A) *extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditure in the pursuit of the cruisers; and* (B) *indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion;* and as also showing (C) that Great Britain, by reason of failure in the proper observance of her duties as a neutral, *had become justly liable for the acts of those cruisers and their tenders.*" So far all is preamble, and as yet there is no mention of *claims*. General injury to the commerce and material interests of the United States, "*by the course and conduct of Great Britain,*" *direct losses* by the *captures* of the "Alabama" and similar cruisers, and also (an item now first added) *by the national expenditure in their pursuit;* and indirect public injury, "shown by the history of those vessels and their operations," are all spoken of; but the "*liability,*" expressly inferred from the same "history" against Great Britain, is limited to "*the acts of those vessels and their tenders.*"

The American Commissioners then proceed to speak of "*the claims* for the loss and destruction of private property *which had thus far been presented,*" as amounting to about 14,000,000 dollars, without interest, "which amount was liable to be greatly increased by claims which had not yet been presented;" and, with respect to the new head of direct losses, now for the first time mentioned, they say that "the cost to which the Government had been put in pursuit of cruisers could easily be ascertained by certificates of Government accounting officers." Here the word "*claims*" is used with respect to direct losses only, as it had always been used before, but with notice that direct losses of the Government, in pursuit of the vessels referred to, are now meant to be included in that category, as well as the losses of private citizens. And then follow the words: "That, in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right of indemnification on their account, in the event of no such settlement being made."

Here is a clear waiver of the (assumed) "right of indemnification" for indirect losses in the event of "an amicable settlement" being made. The meaning of the words "an amicable settlement" has been already considered in the First Part of this Memorandum. At present the question is as to the meaning of the words "the claims generically known as the 'Alabama' claims." If no actual claim for these indirect losses had been previously made, it clearly was not made now by treating it as a reserved "right" which would or might be insisted on in the event of no amicable settlement being arrived at. Still less could it, by means of any such reservation, be brought within the category of "claims" already "generically known as the 'Alabama' claims."

The next step in the proceedings corroborates this view. For, after stating their desire for an expression of regret on the part of Her Majesty's Government, which they obtained, the American Commissioners then proposed "that the Joint High Commissioners should agree upon a sum which should be paid by Great Britain to the United States, *in satisfaction of all the claims*, and the interest thereon." *All the claims* are here spoken of; but it can hardly be possible that, in this proposal, they meant to include indirect losses; because "the right to indemnification" on that account was only to be asserted in the event of no amicable settlement being made; nor were these indefinite claims such as, by any possibility, could be regarded as bearing interest.

In the later passages of this Protocol, which relate to the proceedings resulting in the reference to Arbitration, and in the agreement as to the three "Rules," no trace occurs of any recurrence to the reserved "right of indemnification," or to the subject of indirect losses. "*The 'Alabama' claims*" alone are spoken of.

In the Ist Article of the Treaty itself, the words "*generically* known," &c., so far as they differ from other forms of expression previously used in respect of the same subject, differ only by defining that subject with greater accuracy, so as more pointedly to exclude indirect losses.

"Generically" is an adverb of classification, with reference to the nature of the subject-matter itself. Claims for direct losses, by the acts of a particular class of vessels, or by a definite expenditure for the prevention of these acts, are, in their nature, of the same category or genus; and it is the very fact of their being capable of being directly connected with the acts of those vessels, as an effect with its cause, which makes them so. Indirect public losses, to which many concurrent causes may have contributed (as, with respect to those now in question, is clearly demonstrated by Mr. Sumner's speech, and Mr. Thornton's observations upon it, and also by Lord Clarendon's memorandum of the 6th November, 1869,) are different in their kind, and open up much wider, and wholly different, fields of inquiry.

The VIIth and Xth Articles of the Treaty appear also to be irreconcilable with any other view of the "Claims" referred. The Arbitrators are to "first determine, *as to each vessel separately*, whether Great Britain has, *by any act or omission*, failed to fulfill any of the duties," &c.; and "shall *certify the fact as to each of the said vessels*." This inquiry is addressed, and is limited, to certain imputed "acts or omissions" of this country, not as to any other matters, but as to *each, separately*, of certain vessels. The Arbitrators, if they should find "that Great Britain has failed to fulfill any duty or duties *as aforesaid*," have power to "*award a sum in gross to be paid* by Great Britain to the United States *for all the claims referred*." But the power of awarding a sum in gross cannot enlarge or alter the category of the claims referred, or the scope of the inquiry; the foundation of such an award must be some particular failure of duty, considered by the Arbitrators to have been established against Great Britain, by some acts or omissions as to some particular vessels or vessel; and the sum awarded can only be in respect of damages resulting from such failure of duty, as to such particular vessels or vessel. If the Arbitrators should "find that Great Britain has failed to fulfill any duty or duties *as aforesaid*," but do not award a sum in gross, a Board of Assessors is then "to ascertain and determine *what claims are valid* and what amount or amounts shall be paid by Great Britain to the United States, *on account of the liability arising from such failure as to each vessel*, according to the extent of such liability as decided by the Arbitrators." It seems impossible that power can have been given to the Arbitrators to award a sum in gross for claims not severable as to each vessel, and which, therefore, the Assessors, when dealing with the case of each vessel in detail, could not entertain or allow.

II. The second question, viz, what vessels are described by the words "*the several vessels* which have given rise to the claims generically known as the 'Alabama claims,'" admits of being more concisely treated.

Until Mr. Seward's dispatch to Lord Stanley, of the 27th August, 1866, the "Alabama," "Florida," "Georgia," and "Shenandoah" were the only particular vessels in respect of whose acts any claims had been made. With respect to more general complaints of the same character, Mr. Adams, in his letter to Lord Russell of the 7th April, 1863, referred only to vessels "*supplied from the ports of the United Kingdom*," adding, "So far as I am aware, not a single vessel has been engaged in these depredations excepting such as have been so furnished. Unless, indeed, I might except one or two passenger steamers belonging to persons in New York, forcibly taken possession of while at Charleston in the beginning of the war, feebly armed, and very quickly rendered useless for any aggressive purpose." In his letter of the 20th May, 1865, when recapitulating his former complaints, he mentioned under this head, only "*the issue from British ports* of a number of British vessels," by which a large amount of American property had been destroyed; *the action of these British built, manned, and armed vessels;* the ravages committed by armed steamers, *fitted out from the ports of Great Britain;*" and "*the issue of all the depredating vessels from British ports with British seamen and with, in all respects but the presence of a few men acting as officers, a purely British character.*"

Mr. Seward, in his dispatch of the 27th August, 1866, (as has been already seen,) spoke of "depredations upon our commercial marine, committed by the 'Sumter,' the 'Alabama,' the 'Florida,' the 'Shenandoah,' *and other ships of war, which were built, manned, armed, equipped, and fitted out in British ports, and dispatched therefrom by or through the agency of British subjects*, and which were harbored, sheltered, provided, and furnished, as occasion required, during their devastating career, in ports of the realm, or in ports of British Colonies in nearly all parts of the globe."

As the "Sumter" was (notoriously) not built, manned, armed, equipped, or fitted out in any British port, or dispatched therefrom by or through the agency of any British subjects, Lord Stanley thought that this was a casual and unintentional error, and pointed it out to Mr. Seward (through Sir F. Bruce) as such; especially as the "Georgia," in respect of which vessel particular claims were scheduled to Mr. Seward's dispatch, was not named therein; while no such claims were scheduled in respect of the "Sumter" or of any other ships, except the "Alabama," "Shenandoah," "Georgia," and "Florida." Mr. Seward, as has been already seen, justified himself (12th January, 1867) as "substantially correct," on the ground that the "Sumter" had received certain hospitalities in the British ports of Trinidad and Gibraltar, and had been sold to British subjects at Gibraltar and afterward received at Liverpool.

As this was the first occasion, so it was also the last, on which mention was made of any ship or ships, not alleged to have been fitted out, armed, equipped, or manned in any British port, but which had merely been allowed to receive limited supplies of coal or other necessaries in British waters, as coming within the category of vessels whose acts could be made the foundation of claims against Great Britain. The words "the vessels which have given rise to the claims generically known as the Alabama claims" cannot possibly be extended to vessels of this character, unless it be on the ground of this one mention of the "Sumter" in the context which has been cited in these two letters of Mr. Seward. In the "Case," however, presented on the part of the American Government under the Treaty, damages are claimed in respect of five vessels ("Sumter," "Nashville," "Retribution," "Tallahassee," "Chickamauga,") which were in every sense American; and which are not alleged to have been built, fitted out, armed, equipped, or manned in any part of the British dominions; and in the 7th volume of the Appendix to that "Case," further claims of the like character appear to be made in respect of the acts of two other similar vessels, ("Boston" and "Sallie.")

It may be here observed that, by the general list of claims filed in the State Department of the United States, besides these vessels, not less than eight other American ships ("Calhoun," "Echo," "Jeff Davis," "Lapwing," "Savannah," "St. Nicholas," "Winslow," "York,") in respect of whose acts no claim is now made against Her Majesty's Government, appear to have been also engaged in belligerent naval operations on the part of the Confederate States, which resulted in the destruction of ships and other property belonging to citizens of the United States.

When Lord Stanley (24th May, 1867) spoke of "the proceedings of the 'Alabama' *and vessels of that class*," and (10th September, 1867) of "claims arising out of the depredations of the 'Alabama,'" and "*of vessels of the like character*;" when Mr. Reverdy Johnson (25th March, 1869) spoke of the possible public claim of the United States Government, as resulting (*inter alia*) "from the *fitting out of the 'Alabama' and other similar vessels in Her Majesty's ports*, and from *their* permitted entrance into other ports;" when Mr. Fish (25th September, 1869) spoke of the destruction of American commerce "*by rebel cruisers fitted out in the ports of Great Britain*," and injury "*by suffering the fitting out of rebel cruisers, or by the supply of ships*, arms, and munitions of war to the Confederates;" when Mr. Motley (23d October, 1869) spoke of "the destruction of American commerce *by cruisers of British origin* carrying the insurgent flag;" it is clear that they did not include, or mean to include, as if belonging to one and the same category of vessels, ships alleged to be of British origin, and ships of American origin, with the fitting out or equipment of which British subjects had been in no way concerned.

In Lord Granville's instructions to Her Majesty's High Commissioners, it is also plain that the former class of vessels alone is contemplated. In the narrative of the proceedings of the 8th March, 1871, contained in the 36th Protocol, it seems equally clear that the United States Commissioners had also the same class of vessels in view; for they spoke of "*the history of the Alabama and other cruisers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies*;" and they expressed a hope "that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed *by the vessels whose acts were now under discussion*." Her Majesty's Commissioners (on a later day) replied "that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government *for the escape, under whatever circumstances, of the 'Alabama' and other vessels from British ports*, and for the depredations committed *by them*;" which expression of regret was accepted by the American Commissioners as "very satisfactory."

In the first Article of the Treaty itself, the expression of Her Majesty's regret, in these identical words, immediately precedes the agreement of reference by which the claims referred are described as "*growing out of acts* committed *by the aforesaid vessels*."

The necessary conclusion appears to be that the vessels intended to be referred to in the Treaty were only such as could, in good faith, be alleged to have been fitted out, or armed, or equipped, or to have received an augmentation of force in some part of the British dominions—the three Rules in the VIth Article of the Treaty being, of course, material to be regarded in determining all questions of fact in any case alleged to be of this nature. The "Sumter," "Nashville," and other ships above mentioned have never been alleged to come within any of the terms of this description, unless, indeed, it is now meant to be said that the permission to any Confederate vessel to obtain, in a British port, such limited supplies of coal as were permitted to both the belligerent parties by Her Majesty's regulations ought to be deemed an improper "augmentation of the force" of such vessel within the meaning of the second Rule.

III. The solution of the third question, viz, what claims are described by the words "*all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the Alabama claims*," (being the words in which the subject-matter of the reference to arbitration agreed upon is defined,) has been anticipated by the conclusions already arrived at. It may be added, however, that the words "growing out of *acts committed by* the aforesaid vessels" cannot, without forcing them altogether beyond their fair and natural sense, be applied to claims for indirect losses, not resulting from any particular *acts committed* by any particular ship or ships, but alleged to result (so far as they may be referable at all to naval or maritime causes) from the very existence on the high seas of a naval force belonging to the Confederate States, and recognized by Great Britain and other neutral powers as having a belligerent character and belligerent rights. If the Confederate States had, in fact, procured all their cruisers from British sources, this criticism would still hold good; much more when several (in fact a considerable majority in number) of the cruisers actually employed by them, and by which losses were inflicted on United States citizens, were otherwise procured.

PART III.

On the amount of the claims for indirect losses.

"The claims as stated by the American Commissioners may be classified as follows:

"1. The claims for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers.

"2. The national expenditures in the pursuit of those cruisers.

"3. The loss in the transfer of the American commercial marine to the British flag.

"4. The enhanced payments of insurance.

"5. The prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the rebellion.

"So far as these various losses and expenditures grew out of the acts committed by the several cruisers, the United States are entitled to ask compensation and remuneration therefor before this Tribunal."—(United States Case, p. 469.)

Mr. Fish observes that "an extravagant measure of damages" has been supposed, not only by the British press, but also, "most unaccountably," by some of the statesmen of this country, to be sought through the claim for compensation on account of indirect damages. It will, therefore, be well to present, from United States authority, some part of the evidence which, in the absence of explanation or retraction, has led to this conception. Undoubtedly the Case (p. 476) disclaims an accurate estimate; but it supplies materials which cannot fail to suggest the appropriate conclusion. They are as follows:

From the 4th of July, 1863, Great Britain is declared to have been "the real author of the woes" of the American people, (p. 479.) From this time "the war was prolonged for the purpose" of maintaining offensive operations "through the cruisers," (*ibid.*) And the arbitrators are accordingly called upon "to determine whether Great Britain ought not in equity to re-imburse to the United States the expenses thereby entailed upon them," (*ibid.*) On all these points, the Case proceeds to state, the evidence "will enable the Tribunal to ascertain and determine the amount." To this amount interest is to be added up to the day when the compensation is payable, within twelve months after the award, (p. 480.) The rate of interest in New York is 7 per cent., (*ibid.*;) and "the United States make a claim for interest at that rate" from July 1, 1863, "as the most equitable day." The interest, therefore, is to be charged at 7 per cent. for a period of from ten to eleven years.

It may be presumed to be incapable of dispute that more than half the expenses of the war were incurred after the first of July, 1863. What was the sum total of those expenses? Upon this point there is, in a form generally if not precisely appropriate, official evidence from America. In the Report of the Special Commissioner of the Revenue for 1869, (p. vi,) they are stated at 9,095,000,000 dollars, including 1,200,000,000 dollars for the suspension of industry. Of this amount 2,700,000,000 are set down to the Confederates.

Thus it appears that the Case does not go beyond the truth (so far as this head of damage is concerned) in stating that the Arbitrators would find the materials sufficiently supplied for estimating the amount which "in equity" Great Britain ought to pay. It may indeed be said that the amount, suggested by the passages and facts to which reference is made, forms an incredible demand. But, in perusing and examining this Case, the business of Her Majesty's Government has been to deal, not with any abstract rule of credibility, but with actual, regular, and formal pleas, stated and lodged against Great Britain on behalf of one of the greatest nations of the earth. Is it, then, "most unaccountable," in view of the evidence as it stands, that the press and that statesmen of this country should have formed the idea that "an extravagant measure of damages" was sought by the Government of the United States?

It appears from the dispatch of Mr. Fish that no such idea has ever been entertained by that Government. Having this authentic assurance so supplied, it may be deemed little material to inquire whether on this important matter the language of the Case has been misunderstood by Her Majesty's Government, or whether it is now disavowed. If, however, it has been misconstrued, the misconstruction undoubtedly has not been confined to England, but has been largely shared by writers on the Continent of Europe.

Were this Government indeed prepared to acquiesce in the submission of these claims, it would still remain to ask in what way the Government of the United States proposed to guard against the acceptance by the Arbitrators of those enormous estimates which, taken without authoritative comment, the language of the Case suggests. But it is scarcely necessary to observe that the question of more or less in this matter is entirely distinct from the question of principle on which the statements and arguments of Her Majesty's Government are founded.

[Inclosure 3 in No. 13.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, *21st March*, 1872.

MY LORD: At a very late hour last night I received your Lordship's note of the date of yesterday, informing me that you had laid before your colleagues the copy of Mr. Fish's dispatch to me of the 27th ultimo, of which I furnished you a copy on the 14th instant.

I have also received, at half past four o'clock to-day, a printed copy of a memorandum, which you refer to in the note as being inclosed, and which you request to have read and considered as part of that communication, being intended, as you inform me, to explain to the United States, more fully than can be done in the form of a letter, and as Her Majesty's Government is anxious to do, the considerations which caused them to hold the belief at the time of the ratification of the Treaty that a waiver had been made of the claims for indirect damages.

Having informed me that Her Majesty's Government, recognizing with pleasure the assurance of the President that he sincerely desires to promote a firm and abiding friendship between the two countries, and being animated by the same spirit, gladly avail themselves of the invitation which you say my Government appears to have given, that they should state the reasons which induce them to make the declaration contained in your note of the 3d ultimo, you add that those reasons were purposely omitted at that time in the hope of obtaining, without any controversial discussion, the assent thereto of the Government of the United States.

Your Lordship then proceeds, in reply to Mr. Fish's note, to discuss the whole question of the right of the United States, under the provisions of the Treaty, to put forward in their Case presented at Geneva their claims for indirect losses and damages, and to state the grounds for your denial of such right and the arguments by which that denial is sought to be sustained.

And your Lordship closes this full and long statement of views and arguments by expressing the confident feeling of Her Majesty's Government that they have laid before the President ample proof that the conclusion which was announced in your note of the 3d of February, and by which you think it is hardly necessary to say they adhere, cannot be shaken.

This conclusion I understand to be that "Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward by the United States."

Almost every moment of available time since the receipt of your Lordship's note has been occupied with the copying of it, in order that I may be able to transmit it in time to overtake at Queenstown the mail steamer which leaves Liverpool to-day. I therefore make my acknowledgment of the delivery of your communication brief, and hasten to forward it to my Government at home, that it may have, with the least possible delay, the attention and answer from there which it may be thought to require.

I have the honor to be, very respectfully, your obedient servant,

ROBT. C. SCHENCK.

No. 14.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, 1st *April*, 1872.

Have you any objection to British Government filing Counter Case, without prejudice to their position in regard to consequential damages?

Received at 9.40 a. m.

SCHENCK.

No. 15.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *April* 2, 1872.

We understand the British Government is bound to file Counter-Case, and that their so doing will not prejudice any position they have taken, nor affect any position of this Government. The rights of both parties will be the same after filing as before.

Is the inquiry made at their request?

FISH.

No. 16.

Mr. Fish to General Schenck.

No. 181.]

DEPARTMENT OF STATE,
Washington, April 16, 1872.

SIR: I have given very careful attention to the note of the 20th March, addressed to you by Earl Granville, professing to state the reasons which induced Her Majesty's Government to make the declaration contained in his previous note to you of 3d February, that, in the opinion of Her Majesty's Government, it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries put forward in the Case of the United States.

His Lordship declares this statement to be made upon the invitation which this Government appears to have given. I should regret that what was intended only as a courteous avoidance of the naked presentation of a directly opposite opinion to that which had been expressed on behalf of the British Government, unsustained by any reasons, should have subjected His Lordship to the necessity of an elaborate reply. It was not the desire of this Government to invite any controversial discussion, nor have they now any wish to enter upon or continue such discussion.

Some remarks, however, appear in the note of His Lordship which seem to require a reply.

It opens with a seeming denial of the accuracy of my assertion that claims for indirect losses and injuries are not put forward for the first time in the "Case" presented by this Government to the Tribunal at Geneva—that for years they have been prominently and historically part of the "Alabama claims"—and that incidental or consequential damages were often mentioned as included in the accountability.

It cannot be supposed that His Lordship intends more than to say that the claims for indirect or national losses and injuries were not "formulated" by this Government, and the amount thereof set forth in detail and as a specific demand, for he admits that on the 20th November, 1862, within a few weeks after the "Alabama" had set out on her career of pillage and destruction, Mr. Adams suggested the liability of Great Britain for losses other than those of individual sufferers. In his note of that date to Lord Russell, Mr. Adams stated that he was instructed by his Government to "solicit redress for the *national* and private injuries already thus sustained."

On the 19th February, 1863, Mr. Seward instructed Mr. Adams that "this Government does not think itself bound in justice to relinquish *its* claims for redress for the injuries which have *resulted from the fitting out and dispatch of the Alabama in a British port.*"

As the consequences of this fitting out began to develop themselves, and their effects in encouraging the rebellion became manifest, Mr. Adams, in an interview with Lord Russell, indicated them (as described by the latter in a letter to Lord Lyons under date of 27th March, 1863) as "a manifest conspiracy in this country (Great Britain) to produce a state of exasperation in America, and thus bring on a war with Great Britain, *with a view to aid the Confederate cause.*"

In a note dated April 7, 1865, addressed to Lord Russell, Mr. Adams, after complaining of the hostile policy, pursuant to which the cruisers were fitted out, says, "That policy I trust I need not point out to your Lordship *is substantially the destruction of the whole mercantile navigation belonging to the people of the United States.*" "It may thus be fairly assumed as true that *Great Britain, as a national power, is, in point of fact, fast acquiring the entire maritime commerce of the United States.*"

That Lord Russell regarded this as the foundation of a claim for damages for the transfer of the commercial marine of the United States to the flag of Great Britain is apparent, in his reply to Mr. Adams, under date of May 4, 1865, when he says: "I can never admit that the duties of Great Britain toward the United States are to be measured by the losses which the trade and commerce of the United States may have sustained."

Again, on the 20th May, 1865, Mr. Adams, writing to Lord Russell, distinctly names *indirect* or consequential losses. His language is, "that, in addition to this *direct* injury, the action of these British-built, manned, and armed vessels has had the *indirect* effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain;" that "injuries thus received are of so grave a nature as in reason and justice to *constitute a valid claim for reparation and indemnification.*" In the same note he says, "The very fact of the admitted *rise in the rates of insurance on American ships* only brings us once more back to look at the original cause of all the trouble."

It is difficult to imagine a more definite statement of a purpose to require indemnification.

On the 14th February, 1866, after the presentation of the above-recited complaints, Mr. Seward, writing to Mr. Adams, said: "There is not one member of this Government, and, so far as I know, not one citizen of the United States, who expects that this country will waive, in any case, the demand that we have heretofore made upon the British Government for the redress of wrongs committed in violation of international law."

And again, on the 2d May, 1867, Mr. Seward writes to Mr. Adams: "As the case now stands, the injuries by which the United States are aggrieved *are not chiefly the actual losses sustained in the several depredations*, but the first unfriendly or wrongful proceeding, of which they are but the consequences."

His Lordship also admits the mention, by Mr. Reverdy Johnson, in March, 1869, of a "claim for national losses," which Lord Clarendon, in a paper published in the British Parliamentary Papers, "North America, No. 1, 1870," page 18, defines "national indirect, or constructive claims."

On 15th May, 1869, I instructed Mr. Motley that this Government, in "rejecting the recent Convention, abandons *neither its own claims* nor those of its citizens."

Lord Clarendon, in a dispatch of June 10, 1869, to Mr. Thornton, mentioned that Mr. Motley had assigned, among the causes which led to the rejection of the Johnston-Clarendon treaty, that the "Convention was objected to because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other."

On 25th September, 1869, writing to Mr. Motley, I said: "The number of ships thus directly destroyed amounts to nearly two hundred, and the value of the property destroyed to many millions. *Indirectly* the effect was *to increase the rate of insurance* in the United States, and *to take away from the United States its immense foreign commerce, and to transfer* this to the merchant-vessels of Great Britain." "We complain of the destruction of our merchant marine by British ships." "The President is not yet prepared to speak of the reparation which he thinks *due by the British Government for the larger account of the vast national injuries* it has inflicted on the United States."

In the same instruction I also wrote what seems pertinent to the present phase of the question between the two Governments: "When one power demands of another the redress of alleged wrongs, and the latter entertains the idea of arbitration as the means of settling the question, it seems irrational to insist that the arbitration shall be a qualified or limited one."

Lord Clarendon wrote to Mr. Thornton, on 6th November, 1869, that he was officially imformed by Mr. Motley that while the President at that time abstained from pronouncing on the indemnities due for the destruction of private property, he also abstained from speaking "of the reparation which he thinks due by the British Government for the *larger account of the vast national injuries* it has inflicted on the United States."

Lord Clarendon, in some "observations" on my note, (Blue Book, North America, No. 1, 1870, page 13 *et seq.*,) dwelt at length on my allegation of national or indirect injuries, and characterized them as "*claims*," and resisted them as such. And in an instruction to Mr. Thornton, of 12th January, 1870, he recognizes the paper as relating to the "Alabama claims." (Blue Book, North America, No. 1, 1870, page 20.)

It cannot be denied that these public or national claims (now called "indirect") were prominently before the Senate of the United States when the Convention of 14th January, 1869, was under advisement in that body, nor that they were subsequently actively canvassed before the people of both countries, and especially by the press of Great Britain.

It is equally indisputable that in my note to Mr. Motley, of September 25, 1869, to which Lord Clarendon replied, there was presented the reparation which the President thought "due by the British Government for the *vast national injuries* it had inflicted on the United States."

The 36th Protocol of the Joint High Commission shows that the indirect losses were distinctly presented to the notice of the British Commissioners in the very beginning of the negotiations on the subject, and that they remained unchallenged to the signing of the treaty.

At every stage, therefore, of the proceedings, from November, 1862, when Mr. Adams "solicited redress for the *national* injuries sustained," to the date of the Treaty, this Government has kept before that of Great Britain her assertion of the liability of the latter for what are now termed the "*indirect* injuries."

The President now learns for the first time, and with surprise, that Her Majesty's Government accepted his suggestion that the proposed Commission should treat for "the removal of the differences which arose during the rebellion in the United States, and which have existed since then, *growing out of the acts* committed by the several vessels which have given rise to the claims generically known as the 'Alabama claims,'" in the full confidence that no claim would be made by the United States for the national losses which had been continuously presented.

It is not to be denied that "differences" had arisen between the two Governments respecting these claims, and the Treaty attests that the two Governments were desirous to provide for amicable settlement of *all causes of difference*, and for that purpose appointed their respective Plenipotentiaries. It is thus declared in the outset that the agreements which are about to be formulated are not intended to be an "amicable settlement," but are intended, on the contrary, "*to provide for* a speedy settlement." The subject of the submission in a solemn Treaty will not be narrower than the declared object sought to be accomplished in the reference, and that object was declared to be the removal of *all complaints and claims.*

The Treaty also attests that the differences which had arisen, *growing out of* the acts committed by the several vessels which had given rise to the claims *generically* known as the Alabama claims, *still* exist, and that in order to remove and adjust *all complaints and claims*, "*all* the claims *growing out of the acts* committed by the aforesaid vessels, and *generically* known as the Alabama claims, shall be referred to a Tribunal of Arbitration."

You can bear witness that not even an intimation of the character now put forward by Earl Granville was made at any time during the deliberations of the Joint High Commission.

If Her Majesty's Commissioners were appointed, entered upon, and continued the negotiations with this Government under instructions and with the conviction that the correspondence between Sir Edward Thornton and myself did not cover, and was not intended to cover, "as a subject of negotiation, any claim for indirect or national losses," the withholding of such instructions, and the abstaining from the expression of such conviction on their part, was most unfortunate; and the absence of any dissent or remonstrance against this class of the claims, either when first formally presented to the Commissioners, or during the whole negotiation, or in the Protocols, is most remarkable.

These claims were presented to the British Commissioners as solemnly, and with more definiteness of specification, than were presented by them to the American Commissioners the claims for alleged injuries which the people of Canada were said to have suffered from what was known as the Fenian raids; yet, while the American Commissioners formally objected to the claims for the Fenian raids, as not embraced in the scope of the correspondence which led to the formation of the Commission, and recorded on the Protocols their unwillingness to enter upon the consideration, each time that they were referred to, the British Commissioners, from the first to the last, took no exception and recorded no objection to the presentation made by the American Commissioners of the claims *generically* known as the Alabama claims, which stand in the Protocol as a "*genus*" or class of claims, comprehending several species, and among them enumerating specifically the claims for indirect losses and injuries.

The positive exclusion by the Protocol of one class of claims advanced would seem to be conclusive of the non-exclusion of the other class advanced with greater definiteness and precision, but with respect to which no exception was taken, and no dissent recorded.

It is difficult to reconcile the elaborate line of argument put forward by Earl Granville to show a waiver of claims for indirect losses, with the idea that at the outset of the negotiations Her Majesty's Government did not consider the matter of public or national injuries as the basis of an outstanding claim against Great Britain on the part of the United States.

If these claims had (as Lord Granville's note implies, even if it does not assert) no existence in fact, and had never been "notified" or presented, and were not within the jurisdiction of the Joint High Commission, why is so much stress laid upon their assumed relinquishment?

If, on the other hand, they had existence in fact, if they had (as the references which I have made to a correspondence extending over a long series of years establish, I think, beyond the possibility of doubt) been frequently and persistently presented and notified to the British Government, why is not their positive exclusion from the reference to the arbitration shown? Why should an important class of claims, measured in their possibilities, according to the estimate of the British press, by fabulous amounts, be left to an *inferential* exclusion?

What interest, upon Lord Granville's theory, could Great Britain have in the proposed abandonment of such claims, or why offer any consideration therefor?

How can Her Majesty's Government contend, at the same moment, that the preliminary correspondence excluded the indirect or national losses, and that the possibility of admitting such claims as a subject of negotiation had never been entertained by Great Britain, and on the other hand that they offered and considered the "amicable settlement" of the Treaty, with its expressions and its recognition of certain rules, as the consideration and the price paid for a waiver of those claims by the United States?

I should not feel justified in referring to the expressions used by Earl Granville and other eminent members of the British Parliament in their legislative capacities, but for his own reference thereto, and for the responsibility to which His Lordship attempts to hold you for your presence at one of their sessions, and to which I shall again refer.

But the reference made by Earl Granville to the debate in the House of Lords on the 12th of June, and his own declaration on that occasion, that "they (the indirect claims) entirely *disappear*," strengthens the position of this Government that they had been presented and were recognized as part of the claims of the United States.

A disappearance certainly implies a previous appearance.

Lord Cairns, long accustomed to close judicial investigation and the critical examination of statutes and of treaties, did not agree to the proposition that there had been a relinquishment of the claims. He declared that there could not be found "one single word * * which would prevent such claims being put in and taking their chance under the Treaty."

If, therefore, you were present through the whole of the debate, you heard advanced in the House of Lords as well the opinion held by the United States as that now put forward in behalf of Great Britain.

It is true that Mr. Adams did not "define or formulate" claims for national losses. He did, however, "notify" them to Her Majesty's Government. During the war these claims were continually arising and increasing, and could not then be "defined," and the time for "formulating" them would not arise until a willingness to enter upon their consideration arose.

It is to be remembered that in the spring of 1863 Her Majesty's Government exhibited some impatience when Mr. Adams communicated losses, and claims of indemnfication therefor, and Lord Russell, under date of 9th March of that year, wrote to Mr. Adams that "Her Majesty's Government entirely disclaim all responsibility for any acts of the Alabama, and they hoped that they had already made this decision on their part plain to the Government of the United States."

In July, 1863, Lord Russell referred Mr. Adams to his note of 9th March, and repeated the disclaimer of all liability; and on the 14th September, in still more marked language, he expressed the hope "that Mr. Adams may not be instructed again to put forward claims which Her Majesty's Government cannot admit to be founded on any grounds of law or justice." Lord Russell's replies to Mr. Adams afford the answer to Lord Granville's remark that "no claims (except direct claims) were ever defined or formulated."

But although the United States, under these circumstances, could not consider that hour as the most favorable to a calm examination of the facts or principles involved in cases like those in question, and notwithstanding these admonitions, it became imperative on Mr. Adams still to present complaints.

On 30th December, 1862, he had complained of acts with the intent to "procrastinate the war."

On March 14, 1863, he wrote to Lord Russell that "the war had been continued and sustained by the insurgents for many months past mainly by the co-operation and assistance obtained from British subjects in Her Majesty's kingdom and dependencies." He repeats a similar complaint on 27th March, and again on 28th April, coupled with the suggestion of the responsibility attending those who "furnish the means of protracting the struggle."

At no time during the occurrence of the events which gave rise to the differences between the two Governments did the United States fail to present ample and frequent notice of the nature of the indirect injuries, or of their inclusion in the accountability of Great Britain.

Lord Granville admits that Mr. Johnson proposed the national claims in March, 1869. I mentioned them in my instructions to Mr. Motley, in May, 1869, and again in that of September of that year. Although I made no claim or demand for either direct or indirect injuries, I did present the *vast national* injuries, so that Lord Clarendon, in his reply, manifested no difficulty in discerning that the United States did expect, and would demand, the consideration of national, indirect, or consequential losses.

I can therefore have no doubt whatever that the assertion in my instruction to you of 27th February, commented upon by Lord Granville. does "accurately represent the facts as they are shown in the correspondence between the two Governments."

Earl Granville endeavors to limit the nature and extent of the claims, by an argument based upon the "expression" the "Alabama claims," which (he says) first occurs in a letter which he designates. It may be true that this "expression" appeared for the first time, in the official correspondence, in the letter and at the date indicated; but His Lordship overlooks the fact that in this letter the language used is "*the so-called* Alabama claims," showing evidently the adoption, for convenience, of a then familiar term in common use, designating by a short generic name the whole class and variety of claims, for the various injuries of which the United States had, at different times, made complaint.

The question, however, is not what was understood by the expression "Alabama claims," in 1867, but what the same expression implied in 1871, when introduced into the Treaty. It might not be difficult to show that the expression had in 1867 acquired a definite sense far more comprehensive than that to which Earl Granville desires to restrict it. It is impossible to deny that in 1871 it was as comprehensive in signification as the United States claim it to have been.

The official correspondence of this Government, which was published, and is within the knowledge of Her Majesty's Government, included the indirect injuries under the expression "the Alabama claims." They were prominently put forward in the debates and the public discussions on the rejection of the Johnson-Clarendon treaty. The American press abounded in articles setting them forth as part of the "Alabama claims."

The President enumerated them in his annual message to Congress. in December, 1869.

The British press, in the summer of 1869, and subsequently, discussed most earnestly the indirect losses under the title of "Alabama claims."

Continental jurists and publicists discussed the national claims on account of the prolongation of the war under the head of "Réclamations" having "qu'un rapport *indirect*, et nullement un rapport *direct* avec les déprédations réellement commises par les croiseurs."

In the year 1870, Professor Mountague Bernard, subsequently one of the Commissioners on the part of Her Majesty, and whose name is signed to the Treaty, published a very able but intensely one-sided and partial defense of the British Government, under the title of "A Historical Account of the Neutrality of Great Britain during the American Civil War." The XIVth chapter of this work, as appears in the table of contents, is entitled the "Alabama claims." Under this head he presents the demand made by the United States for redress for "the *national* as well as the private injuries." Professor Bernard knew the extent of our complaints and of our demands. In this work he summarizes an instruction from this Department to the Minister of this country in Great Britain as presenting "the opinion of this Government" that the conduct of England "had been a virtual act of war." He says, "The estimate which the American Government has thought fit to adopt of its own claims * * * is not favorable to a settlement;" that among the reasons for the rejection of the Convention of January 14, 1869, was the fact that it embraced *only* the claims of individuals.

and had no reference to *those of the two Governments on each other.* He sets forth that the President assigned, among the reasons for his disapproval of that Convention, that "its provisions were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress," and that the President further declared that he was not then (1869) "prepared to speak of the reparation which he thinks due by the British Government for *the larger account of the vast national injuries* it has inflicted on the United States." And, further, that this Government held that "all these are subjects for future consideration, which, *when the time for action shall come*, the President will consider with sincere and earnest desire that *all differences* between the two nations may be adjusted amicably and compatibly with the honor of each and to the promotion of future concord between them."

With this knowledge of the demand for "*national*" redress; that the American opinion regarded the conduct of Great Britain as "a virtual act of war;" with the expressed opinion that the American estimate of its claims was extravagant; with the knowledge that a previous Convention had recently been rejected, because, among other reasons, "it embraced *only* the claims of individuals, and had no reference to those of the Government; that the President expected reparation for the vast *national injuries*" which Great Britain had inflicted on the United States, and that he "held *all these subjects for future consideration when the time for action shall come;*" when "the time for action" did come, Professor Bernard, bringing this knowledge, appeared as one of Her Majesty's Commissioners to treat on these very subjects.

It would be doing great injustice to the other eminent and distinguished statesmen and diplomatists who were his associates on the British side of the Commission, to entertain the belief that they brought less knowledge on these points than was held by Professor Bernard.

I hold that enough has been shown to establish that the British Commissioners who negotiated the Treaty did not enter upon the important duty committed to them in ignorance of the nature or of the extent of the claims which the American Government intended to present and to have settled.

Earl Granville's effort to limit and confine the meaning of the expression "the Alabama claims" might induce one who had not the text of the Treaty at hand to suppose that the reference to the Tribunal of Arbitration was limited by the restricted meaning which he attempts to give to the phrase "Alabama claims." But the words of the Treaty impose no such limitation; they are that, "Whereas *differences have arisen* between the Government of the United States and the Government of Her Britannic Majesty, *and still exist, growing out of the acts* committed by the several vessels, which have given rise to the claims *generically* known as the 'Alabama claims.' Now, in order to *remove and adjust all complaints and claims* on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Majesty's Government, the High Contracting Parties agree that *all* the said claims *growing out of the acts* committed by the aforesaid vessels, and generically known as the 'Alabama claims,' be referred," &c.

All the claims *growing out of the acts committed*, &c., are the subject of reference.

That which grows out of an act is not the act itself; it is something consequent upon or incident to the act—the result of the act; and whether the claims to which Her Majesty's Government now takes exception be the results of the acts committed by the vessels is, in the opinion of this Government, for the decision of the Arbitrators.

After the positive declaration of Earl Granville that it "never could have been expected" that Her Majesty's Government would accept the proposition of payment of a gross sum in satisfaction of all our claims, it is apparent that an exposition, at this time, of the reasons which led the President to hope that the amicable settlement which he proposed, coupled with the suggestion of large pecuniary concessions on our part, would be made, will not tend to remove the differences now existing between the two Governments respecting the jurisdiction of the Geneva Tribunal.

I as deeply regret that Her Majesty's Government cannot understand upon what that hope was founded as I deplore what now appears to have been the predetermination of Her Majesty's Government to reject every proposal which involved an admission of any liability on the part of Grêat Britain.

Another proposal, having no similitude to the previous one submitted by us, was made by Her Majesty's Commissioners. They accepted, without objection, the American statement of the subject-matter in dispute, as it was made, and they proposed, instead of the "amicable settlement" offered by the American Commissioners, "a mode of settlement" by arbitration, a litigation, a lawsuit in which Great Britain should deny all liability to the United States for all the injuries complained of. After sundry modifications, their proposal was accepted by the United States, who were thus compelled to bring before the Tribunal the same presentment of their losses which they had laid before Her Majesty's Commission. The subject-matter of the submission made by the American "Case" to the Geneva Tribunal differs in no particular from that which was accepted as the statement of the American claims, without objection on the part of the British members of the Joint High Commission.

The President is now, for the first time, authentically informed that a waiver by this Government of the claims for indirect losses which were formally presented was, in the opinion of Her Majesty's Government, also contained in this second proposal, was a necessary condition of the success of the negotiation, and that "it was in the full belief that this waiver had been made that the British Government ratified the Treaty." Such a relinquishment of a part of the claims of this Government is now made by Earl Granville the pivot and real issue of the negotiation. He appears to imply that the price paid by Her Majesty's Government to obtain that waiver was the concession referred to in His Lordship's note, and which, he says, would not have been expected by this Government "if the United States were still to be at liberty to insist upon all the extreme demands which they had at any time suggested or brought forward."

Here, again, is a clear intimation that Her Majesty's Government were not in ignorance of the character of our demands, but that they were well "*known*," and that the consideration to be paid for their waiver (whether real or imaginary) had been deliberately determined.

Is it not surprising that such "extreme demands" should be waived on the one hand, and such "concessions" made on the other, without a word of reference or suggestion that the one was conditioned on the other?

You can bear witness that at no time during the deliberations of the Joint High Commission was such an idea put forward by Her Majesty's Commissioners.

The Protocols are utterly silent on the subject.

That no such relinquishment was incorporated into the text of the Treaty is clear enough. Why not, if thus deemed at the time, by Her Majesty's Government, the hinge and essential part of the Treaty?

What are termed the "concessions" on the part of Great Britain appear in the Treaty. If the relinquishment by the United States of a part of their claim was the equivalent therefor, why is not that set forth? Throughout the Treaty are to be found reciprocal grants or concessions, each accompanied by its reciprocal equivalent.

How could it happen that so important a feature of the negotiation as this alleged waiver is now represented to be was left to inference, or to argument from intentions never expressed to the Commission or the Government of the United States until after the Treaty was signed?

The amplitude and the comprehensive force of the first article (or the granting clause) of the Treaty did not escape the critical attention of Her Majesty's Commissioners; but was any effort made to limit or reduce the scope of the submission or to exclude the indirect claims?

You were informed in my instruction of February 27 that this Government does not consider the Treaty as of itself a settlement, but as an agreement as to the mode of reaching a settlement. To that opinion the President adheres. He cannot admit that the treaty provision for a settlement is in substance or legal effect the same as the "amicable settlement" spoken of in the conference held on the 8th of March, as is set forth in the Protocol. The differences between the two stand out clear and broad. One would have closed up, at once and forever, the long-standing controversy; the other makes necessary the interposition of friendly Governments, a prolonged, disagreeable, and expensive litigation with a powerful nation, carried on at a great distance from the seat of this Government, and under great disadvantages; and, more than all, it compels the re-appearance of events and of facts, for the keeping of which in lifeless obscurity the United States were willing to sacrifice much, as they indicated in their proffer to accept a gross sum in satisfaction of *all* claims.

The United States can assent to no line of argument which endeavors to transfer the waiver of claims for indirect injuries (implied from their withholding the estimate of the amount of such claims) from the rejected proposal of the American Commissioners for a settlement, "à l'amiable," by the Joint High Commission, and to incorporate it "sub silentio" in the arbitration proposed by the British Commissioners. The offer of this Government to withhold any part of its demand expired and ceased to exist when the acceptance of the proposal which contained the offer was refused. It was never offered except in connection with the proposal that the Joint High Commission should agree upon a gross sum to be paid in satisfaction of all the claims, and then it was repelled. It was never again suggested from any quarter. It is impossible for Her Majesty's Government to fix upon a moment of time when there was an agreement of the contracting parties respecting such a waiver as that to which Earl Granville refers.

To the suggestion of doubt contained in the note of Lord Granville, whether "it would be advantageous to either country" to treat claims of the nature of those now under discussion "as proper subjects of international arbitration," I can only reply that, for all practical purposes, argument upon this question is suspended, inasmuch as, in our judgment, Great Britain and the United States have bound themselves respectively by the Treaty to make such submission.

The first Article of that solemn instrument recites and declares that "*all* the said claims growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama claims,' shall be referred to a Tribunal of Arbitration." Earl Granville admits that the foregoing are "the words in which the subject-matter of the reference to arbitration agreed upon is defined."

If the "Case" of the United States, as presented at Geneva, contain claims not "growing out of acts committed" by the aforesaid vessels, then such claims are not within the reference, and must be so adjudged. In like manner, if any of the claims set forth in the American Case were not, *at the date of the correspondence between Sir Edward Thornton and myself*, (in January and February, 1871,) "generically known" as part of the Alabama claims, they are not within the jurisdiction of the Tribunal, and must be so adjudged.

The President admits, unreservedly, that every item of the demand presented at Geneva must, within the meaning of the Treaty, be a "claim;" that it must be one of the claims "generically known as the Alabama claims," and that it must "grow out of" the acts committed by the vessels which have given rise to the claims thus generically known.

Which of the claims presented by the United States at Geneva answers these requirements, and is well founded according to the true intent and meaning of the Treaty, is not to be determined by either party litigant, but is a question for the Tribunal to decide.

I have already referred to the comprehensiveness which the expression "Alabama claims" had acquired when it was used in the correspondence, and was incorporated in the Treaty in 1871.

Lord Granville says: "The word *generically* naturally signifies that all the claims intended were *ejusdem generis*." His argument would require them to be *ejusdem speciei*.

The word was designedly used to embrace a "genus"—a class of claims divided into several species. "Genus est id, quod, sui similes communione quadam *specie autem differentes*, duas aut plures complectitur parties."

The direct losses from destruction of property are of one species; they differ in dates, localities, and amounts; they do not differ in character or in "species.".

Referring to my remark in the note to you of 27th February, that the indirect injuries are covered by one of the alternatives of the Treaty, Earl Granville does not perceive what "alternative" in the Treaty covers these claims.

This Government is of the opinion that they are covered by the alternative power given to the Tribunal of Arbitration, of awarding a sum in gross, in case it finds that Great Britain has failed to fulfill any duty, or of remitting to a Board of Assessors the determination of the validity of claims presented to them, and the amounts to be paid.

By the Article VII, "in case the Tribunal find that Great Britain has failed to fulfill any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it."

If Great Britain be found by the Tribunal to have failed of any of its duties, it is clearly within the power of the Tribunal, in its estimate of the sum to be awarded, to consider all the claims referred to it, whether they be for direct or for indirect injuries; there is no limitation to their discretion and no restriction to any class or description of claims.

The United States are "prepared to accept the award, whether favorable or unfavorable to their views." They are confident "that it shall be just."

Earl Granville refers to the allusion made in my instruction to you of 27th February, to the presentation by Her Majesty's Agent to the Claims Commission now sitting in this city of a claim for a part of the Confederate cotton loan, the express exclusion of which from the consideration of the Commission his Lordship admits had been mutually agreed upon in the negotiations which preceded the appointment of the High Commissioners, and was provided for by the wording of the Treaty.

He thinks, however, that there is no analogy between the proceedings before the Washington Commission and those before the Geneva Tribunal; such, at least, appears to be the inference to which his argument is intended to lead.

He cites from Article XIV the power given to the Claims Commissioners "to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any extent, according to the true intent and meaning of the Treaty," and he adds that "no similar words" are used as to the powers of the Geneva Tribunal.

It is true that "no similar words" are used, but his Lordship has overlooked the much broader and more comprehensive powers given to the Geneva Arbitrators by the words in Article II authorizing them "to examine and decide all-questions that shall be laid before them on the part of the Governments of the United States and of Her Britannic Majesty, respectively."

These grants of power are to be taken in connection with the subject-matter referred.

The subject-matter of the reference to the Washington Commission is the claims for alleged wrongful acts by either Government upon the persons or property of individuals or of corporations, citizens or subjects of the other Government.

Articles XII and XIV prescribe certain requirements as to the manner, the channel, and the time of presentation of the claims to be examined.

The words "made, prepared, and laid before" have no possible reference to the nature, the character, or the ground-work of the claim, and can be construed only as applying to each claim, which is a proper subject of reference, the test of the requirements of the Treaty, with respect to the manner, the channel, and the time of its being brought before the Commission.

The subject-matter referred to the Arbitrators at Geneva is "all the claims growing out of acts committed by the vessels which have given rise to the claims generically known as 'the Alabama claims,' in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims."

In connection with such claims, and with the purpose expressed in the Treaty, the Arbitrators have the broad grant of power to "examine and decide *all questions* that shall be laid before them on the part of" either Government.

If Lord Granville can find in the words he has quoted power in the Washington Commission to determine whether or not a claim presented is within its jurisdiction, it will be difficult to deny the same power to a Tribunal to which the more comprehensive grant is made in the words of the Article II.

The allusion in my instruction of 27th February to the Confederate cotton loan was to the fact that a claim, one of a class for whose exclusion his Lordship admits that expressions had been used in the negotiations which preceded the appointment of the High Commission, and were also used in the Treaty, was presented by Her Majesty's Government, (for by the Treaty a claim can only be laid before the Commission on the part of the Government,) and that, when the United States remonstrated and requested the British Government to withdraw the claim, their remonstrance was unheeded, and the claim was pressed to argument; that the United States demurred before the Commission to its jurisdiction, and the decision of the Commission disposed of what might have been a question of embarrassment.

The claim was put forward as a test case, and was one of a class involving upwards of fifty millions of dollars.

My allusion to it was not in the nature of a complaint of its presentation. Earl Granville has kindly furnished certain dates. From his note we find that it was on the 21st November that he learned that the United States remonstrated against the presentation of this class of claims; that *prior* to the 6th December he had ascertained from Sir Edward Thornton (who it is known had left England on his return to the United States as early as the 28th day of November) that claims of this class were intended to be excluded, and that the Treaty contained words inserted for that object; that the remonstrance and request of the United States were not considered by Her Majesty's Government until the 11th of December; that a decision thereon was not made until the 14th, (on which day, I may add, the Agent and Counsel of the British Government brought the case to trial in Washington,) and that the announcement of the decision of Her Majesty's Government was not made to you until the 16th December, two days after the case had been adjudged.

These dates illustrate my allusion to this case. The United States calmly submitted to the Commission the decision of its jurisdiction over a claim involving in its principle the question of liability for many millions of dollars, which, it is admitted, had been expressly agreed to be withheld from the province of the Commission, and thereby avoided jeoparding the Treaty, and the serious embarrassment which might have resulted from their undertaking to become the judges in their own behalf.

I cannot pass over without notice the allusion made by Earl Granville to your presence in the House of Lords on the occasion of the debate of the 12th of June last, and the fact that you did not at any time challenge either of the conflicting interpretations of the Treaty expressed on that occasion. I may add that similar reflections upon the conduct of this Government in that relation, uttered by prominent statesmen and newspapers in Great Britain, have been made public, and thus brought to my notice.

To all of these it is sufficient to say that the President does not hold it as any part of his duty to interfere with the differences in the Parliament, or the public press of Great Britain, respecting the true construction of the Treaty. The utterances in Parliament are privileged; the discussion in that high body is looked upon by us as a domestic one, of which this Government has no proper cognizance. If it is bound to take notice, it has the right to remonstrate.

To concede either to a foreign State would be, on the part of a Parliamentary Government, the abandonment of the independence which is its foundation and its great security and pride.

Had you interfered, therefore, either to remonstrate or to demand explanation, you would have exposed yourself and your Government to the very just rebuke which the United States have had occasion to administer to diplomatic agents of foreign Governments, who, in ignorance or in disregard of the fundamental principles of a Constitutional Government with an independent legislature, have asked explanations from this Government concerning the debates and proceedings of Congress, or of the communications by the President to that body.

You had a right to assume that if Her Majesty's Government desired any official information from you or your Government respecting the Treaty, or desired to convey any information to you or to your Government, they would signify as much in the usual forms of diplomatic intercourse, as was done by Lord Granville in his note to you of February 3. Certain it is that it would have been in violation of recognized diplomatic proprieties had you, on the occasion referred to, taken sides with either of the opposing views of the Treaty uttered on that occasion in Parliament.

Further than this, it appears to me that the principles of English and American law (and they are substantially the same) regarding the construction of statutes and of treaties and of written instruments generally would preclude the seeking of evidence of intent outside the instrument itself. It might be a painful trial on which to enter, in seeking the opinions and recollections of parties, to bring into conflict the differing expectations of those who were engaged in the negotiation of an instrument.

While the United States have nothing to fear from departing from the eminently just rule of law to which allusion has been made, it abstains from such departure.

Very much of the matter so elaborately and ingeniously presented in the memoranda attached to the note of Earl Granville could be fitly and appropriately addressed by the British Government to the Tribunal which is to pass upon the points presented therein. It would require amplification, if not correction of statement, to make it present all the facts essential to a correct judgment, and might require a reply before that Tribunal. It would certainly require explanation as to many of its presentations, and its logic would be denied; but it does not seem to require a reply from me in the form of diplomatic correspondence.

As to what is contained in Part III of that Memorandum, I repeat in substance what I mentioned in my note to you on this subject, of 27th February, that the indirect losses of this Government by reason of the inculpated cruisers are set forth in the American "Case" as they were submitted to the Joint High Commission in the first discussion of the claims on March 8, and stand in the Protocol approved May 4. They were presented at Geneva, not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration in a final settlement and adjudication of all the differences submitted to the Tribunal. The decision of what is equitable in the premises, the United States, sincerely and without reservation, surrender to the arbitrament designated by the Treaty.

What the rights, duties, and true interests of both the contending nations, and of all nations, demand shall be the extent and the measure of liability and damages under the Treaty, is a matter for the supreme determination of the Tribunal established thereby.

Should that august Tribunal decide that a State is not liable for the indirect or consequential results of an accidental or unintentional violation of its neutral obligations, the United States will unhesitatingly accept the decision.

Should it, on the other hand, decide that Great Britain is liable to this

Government for such consequential results, they have that full faith in British observance of its engagements to expect a compliance with the judgment of the Tribunal which a solemn Treaty between the two Powers has created in order to remove and adjust all complaints and claims on the part of the United States.

To the judgment of the Tribunal when pronounced the United States will, as they have pledged their faith, implicitly bow. They confidently expect the same submission on the part of the great nation with which they entered into such solemn obligations.

I am, &c.,

HAMILTON FISH.

No. 17.

General Schenck to Mr. Fish.

[Extract.]

No. 198.] LEGATION OF THE UNITED STATES,
London, *April* 18, 1872. (Received April 30.)

SIR: * * * * *

I spent some time with his Lordship, occupying myself principally in the endeavor to make him understand how little proper comprehension there is here of the state of public feeling and opinion in the United States. They believe, and the Government has seemed to share in the impression, that there is a very general desire among our people, including the most of our prominent men, that the claims for indirect damages should be withdrawn, and the Arbitrators not asked to consider or decide on them. I explained to Lord Granville that much of this misapprehension comes from the course of the English press, giving prominence as it does to every article, letter, or publication of any sort coming from America or purporting to be written by an American taking the British view of the question, and studiously excluding all that would tend to prove the almost entire unanimity of our press and citizens in support of the position taken by their Government. I warned him against trusting to the correspondence and writing of certain persons and journals that I named, as affording any true exposition of the general sentiment in our country. And I represented to him that both the Government and citizens were much more generally concerned to have all claims of every sort, whether regarded as substantial or shadowy, go to the Arbitrators to be decided upon, so that every existing complaint and grievance might be blotted out and wiped away forever, than they were troubled about either the character or amount of the award to be rendered by the Tribunal.

What was most especially desired, I assured him, was that a decision of the whole question and extent of the liability of a neutral should be arrived at, so that the rule and the law for all might be known in the future.

Indeed, among other things I told Lord Granville frankly that I regretted to have to inform him there were not a few of our best people who were growing so dissatisfied with the position which Her Majesty's Government were now assuming, that they were beginning to say that Great Britain, they supposed, must be permitted to take her course and annul the Treaty, in which event the United States could surmise such an unhappy end of our labors and hopes as well as this Government.

All I said, and there was a great deal of it, was expressed and received in the most friendly manner, and helped to give us, I hope, a better mutual understanding, whether it may have or not any other effect or result.

His Lordship, I am more than ever satisfied, is sincerely and painfully earnest in his desire to save the Treaty, and I have no doubt that this is equally true of other ministers.

* * * * * *

I have, &c.,

ROBT. C. SCHENCK.

No. 18.

Mr. Fish to General Schenck.

[Extract.]

No. 184.]

DEPARTMENT OF STATE,
Washington, April 23, 1872.

SIR: It is unnecessary now to consider what action this Government might have taken with regard to the present phase of the Alabama claims question had the British Government calmly presented their views with respect to their construction of the Treaty in relation to what are now familiarly called "the indirect claims." The public discussion which they have thought proper to excite, and the discourteous tone and minatory intimations of some of the utterances of the ministry, impose upon the United States a different line of action from that which might have been adopted in response to a calm presentation of a different construction of the Treaty from that which is entertained by this Government, and of the apprehensions which the imagination of the British public seem to entertain of the possible magnitude of the award that may be made for that class of the claims.

Not doubting the correctness of the position which this Government has occupied, and fully convinced that the "indirect claims" were not eliminated from the general complaint of the United States, I am not disposed to question the sincerity of those who hold to the opposite view.

This Government is very anxious to maintain the Treaty and to preserve the example which it affords of a peaceful mode of settling international differences of the very gravest character.

Neither the Government of the United States, nor, so far as I can judge, any considerable number of the American people, have ever attached much importance to the so-called "indirect claims," or have ever expected or desired any award of damages on their account.

They were advanced during the occurrence of the events of the cruisers' depredations, and pending the excitement and the irritation caused by the conduct of Great Britain. They became more prominently associated with the case during the discussions attendant upon the Johnson-Clarendon Treaty, and its rejection; and it was impossible for the American Commissioners not to lay them as part of the American complaint, and as forming part of the American claims, before the Joint High Commission.

That they were not excepted to by the British Commissioners is no fault of this Government.

Being left in the complaint, and set forth, unchallenged, in the Protocol, (signed only four days before the signing of the Treaty, and when the Treaty was completed in form and substance, and was being engrossed for signature,) they could not be omitted from the "Case."

* * * * * *

The United States now desire no pecuniary award on their account. You will not fail to have noticed that through the whole of my correspondence we ask no damages on their account; we only desire a judgment which will remove them for all future time as a cause of difference between the two Governments. In our opinion they have not been disposed of, and unless disposed of, in some way, they will remain to be brought up at some future time to the disturbance of the harmony of the two Governments.

The United States are sincere in desiring a "tabula rasa" on this Alabama question, and therefore they desire a judgment upon them by the Geneva Tribunal.

* * * * * * *

In the correspondence, I have gone as far as prudence would allow in intimating that we neither desired or expected any pecuniary award, and that we should be content with an award that a State is not liable in pecuniary damages for the indirect results of a failure to observe its neutral obligations.

It is not the interest of a country situate as are the United States, with their large extent of sea-coast, a small Navy, and smaller internal police, to have it established that a nation is liable in damages for the indirect, remote, or consequential results of a failure to observe its neutral duties. This Government expects to be in the future, as it has been in the past, a neutral much more of the time than a belligerent.

It is strange that the British Government does not see that the interests of this Government do not lead them to expect or to desire a judgment on the "indirect claims;" and that they fail to do justice to the sincerity of purpose, in the interests of the future harmony of the two nations, which has led the United States to lay those claims before the Tribunal at Geneva.

* * * * * * *

I need not repeat to you the earnestness of the President's desire to prevent a failure of the Arbitration, or any repudiation of a Treaty which is so hopeful of beneficent results, nor need I urge you to continued efforts, by all that is in your power, consistently with the honor and dignity of this nation, to bring about an honorable understanding between the two Governments on this question, which has been, as it appears to us, so unnecessarily and unwisely raised, to the imminent peril of an important Treaty.

I am, &c.,

HAMILTON FISH.

No. 19.

General Schenck to Mr. Fish.

[Extract.]

No. 210.] LEGATION OF THE UNITED STATES,
London, April 25, 1872.

SIR: At this moment it appears too probable that the Government here will * * * * * * *
take such a course as will put an end to the Arbitration at Geneva and to the Treaty.

I will not now attempt to explain or comment on the situation. The development and the events of the last few days you will have gathered from my telegraphic communications, and from the reports of proceedings in Parliament, and articles from the London journals, which I continue to send you.

If there is to be a disastrous termination of all our work, from which we had hoped so much of good for the two countries and for the world, the obstinate refusal of the British Government and people to go on with a solemn and high engagement that, without any sacrifice of their dignity and interests, might have been conducted to a conclusion which would have blotted away all serious causes of disagreement between them and us, will be not a little owing to the course of some of our own citizens.

The difficulties have been wonderfully increased of late, and Great Britain encouraged in her position by the tone of some of the American journals, by inconsiderate declarations of some public men, and by much writing, telegraphing, and conversation, not wise and thoughtful, though generally, perhaps, not mischievously intended. This has led at last to a common conviction here that the best and most influential men of the United States desire to have our Government recede from its position.

I await still your communication in reply to Lord Granville's note of the 20th ultimo. I hope, also, with that, or sooner by telegraph, to receive instructions from you, which may direct and help me in any contingency likely to occur. I shall doubtless have much to report and bring to your consideration now very soon. In the mean time, I will not fail to keep my mind anxiously directed to any and every expedient by which the Treaty may possibly be preserved, although our interest in maintaining and executing its provisions is certainly not greater than the need of this nation, which does not seem to me to fully weigh and appreciate the unhappy consequences to flow from its repudiation.

I have, &c.,

ROBT. C. SCHENCK.

No. 20.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *April* 27, 1872.

You are aware that neither in the Case presented in behalf of this Government at Geneva nor in the instructions to you have the United States asked for pecuniary damages on account of that part of the Alabama claims called the indirect losses, which the British Government think are not within the province of the Tribunal. We think it essential, however, that the question be decided whether claims of that nature can in the future be advanced against the United States as a neutral by Great Britain when the latter is a belligerent; for if Great Britain is to be at liberty when a belligerent to advance claims for indirect losses or injuries against this country, then our claims must be maintained and we must press for compensation.

A conversation with Sir Edward Thornton induces the belief that the

British Government may make a proposal to you to the effect that Her Majesty's Government engages and stipulates that in the future, should Great Britain be a belligerent and this country neutral, and should there be any failure on the part of the United States to observe their neutral obligations, Great Britain will make or advance no complaints or claims against the United States by reason or on account of any indirect, remote, or consequential results of such failure; and that, in consideration of such stipulation, the United States shall not press for a pecuniary award of damages before the Geneva Tribunal on account of the claims respecting which Great Britain has expressed the opinion that they are not included in the submission, namely, the transfer of the American shipping, increased insurance, and the prolongation of the war.

Should a proposal to this effect be made by the British Government, the President will assent to it, it being understood that there is no withdrawal of any part of the American Case, but an agreement not to demand damages on account of the claims referred to, leaving the Tribunal to make such expression of opinion as it may think proper on that question.

It is presumed that such an agreement may be carried into effect by an exchange of notes.

FISH.

[From British Blue Book, "North America," No. 9, (1872,) p. 2.]

No. 21.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *April* 29, 1872.

SIR: General Schenck told me this day, in a conversation, that he had not yet received the answer from Mr. Fish to my letter of the 20th ultimo, but that he had received a telegraphic message, the substance of which he could not officially communicate until after the delivery of Mr. Fish's answer.

He then read to me as follows:

> You are aware that neither in the Case presented in behalf of this Government nor in the instructions to you, have the United States asked for pecuniary damages on account of that part of the "Alabama claims" called the indirect losses, which the British Government think are not within the province of the Tribunal.
>
> We think it essential, however, that the question be decided whether claims of that nature can in the future be admitted against the United States as a neutral by Great Britain when the latter is a belligerent; for if Great Britain is to be at liberty while a belligerent to advance claims for indirect losses or injuries against this country, then our claims must be maintained, and we must press for compensation.
>
> A conversation with Sir E. Thornton induces the belief that the British Government may make a proposal to you to the effect that Her Majesty's Government engages and stipulates, that in future should Great Britain be a belligerent, and this country a neutral, and should there be any failure on the part of the United States to observe their neutral obligations, Great Britain will make or advance no complaints or claims against the United States, by reason or on account of any indirect, remote, or consequential results of such failure; and that, in consideration of such stipulation, the United States shall not press for a pecuniary award of damages before the Geneva Tribunal on account of the claims respecting which Great Britain has expressed the opinion that they are not included in the submission, namely, the transfer of the American shipping, increased insurance, and the prolongation of the war Should a proposal to this effect be made by the British Government, the President will assent to it; it being understood that there is no withdrawal of any part of the American Case, but an agreement not to demand damages on account of the claims referred to

> leaving the Tribunal to make such expression of opinion as it may think proper on that question. It is presumed that such an agreement may be carried into effect by an exchange of notes.

I observed to General Schenck that Sir E. Thornton, in whom I had the fullest confidence, had no instructions, and no authority to give an opinion on any proposal for the solution of the difficulty.

I had purposely desired to confine the negotiations to one channel, in order to avoid confusion.

The United States Minister remarked that the words of the telegram did not go so far as to say that Sir E. Thornton had done so.

I then stated that the proposal in its present shape could not be adopted by Her Majesty's Government. It was only proposed that the American Government, who had presented the claims for indirect losses, shall no further press them. But the Arbitrators had them before them; we certainly should not consent to plead against them; and the mere absence of further pressing them by the United States Government would leave the matter, as regarded the Arbitrators, in the position it now was.

As to the Arbitrators being left to make such expression of opinion as they may think proper on that question, it appeared to be unintelligible.

If the United States Government agreed substantially to withdraw the indirect claims, it was not only with a feeling, which I cordially appreciated, of maintaining the most friendly feelings between the two countries, but also because they believed it was in the interest of both that there should be no future liability on the part of either Government for such claims. If we both came to an agreement, no strength would be given to that agreement by a favorable expression of opinion from a body who were not appointed in order to lay down principles of international law; and if they gave a contrary opinion, it would be an unseemly result, and against the interest of both countries.

I then read to him the following statement of the views which the Cabinet were disposed to entertain as to the course which might be pursued:

> We are ready to join with the United States in a statement to the Arbitrators that, in any award they may make, they are not to have regard to the indirect claims. We are also ready to state that the language we have hitherto used respecting these indirect claims involves a declaration of intention, which is to guide our conduct in future. Any such intention, and its binding force on future conduct, would of course be reciprocal. We do not know what is meant by the submission of the abstract question to the Arbitrators, nor do we see how it could be admissible, inasmuch as that question would already have been virtually decided by mutual consent.

General Schenck then asked me why I should not write to him such a note as he would suggest, in which it should be said that "while Her Majesty's Government still adhere to their view that it is not within the province of the Arbitrators to consider or decide upon the claims for indirect losses, and that therefore the Government of the United States ought not to press for a consideration of such claims, yet they are free to state that, in the event of the Government of the United States agreeing to refrain from pressing for compensation, or for any pecuniary award for that portion of their claims as set out in their Case to the Geneva Arbitrators, Her Majesty's Government will, on their part, agree that the view of the inadmissibility of such claims which they have heretofore presented, will still continue to be their principle of action and conduct in all like cases, and in similar circumstances, and particularly, are ready to give assurance, in pursuance of the recognition of such principles, to the Government of the United States, that if Great Britain should at any time hereafter be a belligerent while the United States are neutral, claims of that nature will never be advanced against the United States."

I stated to the United States Minister that the Cabinet, in discussing the scheme sent by Sir E. Thornton, had treated it as Mr. Fish's proposal, and had not entertained the thought of its being a proposal to be made by themselves.

General Schenck said that it was of great importance that we should make the proposal.

I said that I had been writing at his dictation and did not wish to put words in his mouth, but that I thought the words which I had used, "not to have regard" to claims for indirect losses, were better in every way than those which he had adopted from Mr. Fish's telegram, "not to press," &c.

I had no doubt of the good faith of the United States Government, but it was desirable, after the past misunderstanding, to make everything as clear as possible. General Schenck declined to deviate from the telegram in this particular.

I then suggested the addition of the words "and such agreement being made known to the Arbitrators before the 15th of June," which he adopted. I also pointed out the omission of any declaration of reciprocity for the future, which was a matter of course, and he authorized me to write down "such understanding between the parties of course to be reciprocal for the future."

General Schenck repeated a strong appeal to me to be contented with substantially getting what we wanted.

I promised to submit what he had written, and for which I could undertake no responsibility, to my colleagues, and we agreed to continue confidential communication in order to save time.

After consultation with my colleagues, I forwarded to General Schenck the note and inclosure, of which I transmit copies herewith.

I am, &c.,

GRANVILLE.

[Inclosure 1 in No. 21.]

Earl Granville to General Schenck.

[Confidential.]

16 Bruton Street, *April* 29, 1872.

My Dear General: I send you in a rough state a paraphrase of your proposed draught. Please return it to me when you have taken a copy.

The Cabinet were of opinion that it was for the United States to make the proposal officially as well as confidentially, but they are prepared to concede on this point in the spirit which you recommend.

They insist upon the words in the first half of the third page[1] as preferable to those you have taken from the message of Mr. Fish.[2]

The other alterations are for the purpose of clearness, and in the hope that some of them will be more acceptable to your Government.

Yours, &c.,

GRANVILLE.

[For Inclosure 2 in No. 21, see p. 481.]

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[1] "That the Arbitrators are not to have regard, in any award that they may make, to the above-mentioned claims." (See Inclosure 2.)

[2] "The United States shall not press for a pecuniary award of damages before the Geneva Tribunal on account of the claims respecting which," &c. (See page 478.)

No. 22.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *April* 30, 1872.

Your 181, received last night, has been by some accident wet and blurred, but I hope to make it all out to-day. Meantime your telegram, which came Sunday night, was the occasion of a strictly confidential interview with Granville yesterday. He objected to this Government making first movement, but that point is now conceded. They object to having Arbitrators express opinion on indirect claims, when the two Governments agree that they are not to be the subject of award.

After consideration by Cabinet the following paper was given me last night confidentially as the draught of a possible communication to be made to me, if the United States have promised to assent to it and will previously put Her Majesty's Government in possession of the terms of the assent:

> Her Majesty's Government adhere to their view that it is not within the province of the Arbitrators to consider or to decide upon the claims for indirect losses, viz, the transfer of the American shipping, the increased premiums of insurance, and the prolongation of the war, and that consequently the Government of the United States ought not to press for a consideration of such claims. They are, however, ready to state that, in the event of the Government of the United States agreeing that the Arbitrators are not to have regard, in any award that they may make, to the above-mentioned claims, Her Majesty's Government will, on their part, agree that the view which they have heretofore presented of the inadmissibility of such claims shall still continue to be their principle of action and conduct in all like cases and in similar circumstances; and that they are ready, in pursuance of the recognition of such principle, to give assurance to the United States that, if Great Britain should, at any time hereafter, be a belligerent, while the United States is a neutral, claims of that nature, in similar cases and similar circumstances, will never be advanced against the United States, such an assurance for the future being reciprocally given by both parties. An arrangement such as is here sketched out might be carried into effect by an exchange of notes, which shall be communicated to and recorded by the Arbitrators.

In submitting this draught of their proposal, I should inform you that I have insisted on this language, "the United States agreeing to refrain from pressing for compensation or for any pecuniary award for the above-mentioned claims."

SCHENCK.

[From British Blue Book North America, No. 9, (1872,) p. 1.]

No. 23.

Sir E. Thornton to Earl Granville.[1]

[Extract.]

WASHINGTON, *April* 30, 1872. (Received May 12.)

I called upon Mr. Fish at the State Department on the 25th instant, Thursday, the day of the week on which he requests that members of the Diplomatic Body may visit him. He informed me that he had received the day before a telegram from General Schenck, in which he stated that your Lordship had told him that, if Mr. Fish's answer to your note of the 20th ultimo did not contain some satisfactory communication with regard to the claims for indirect damages, Her Majesty's Government would be obliged to announce its intention of withdrawing entirely from the Arbitration at Geneva. Mr. Fish added that he should sincerely regret to hear of such an announcement being made, for that it could only be looked upon as a menace, and would destroy all hope of an understanding upon the subject. Mr. Fish then sent for the draught of his dispatch to General Schenck in answer to your Lordship's note of the 20th ultimo, and read it to me. Your Lordship will probably have received a copy of it from General Schenck yesterday or to-day. Mr. Fish also read me part of the dispatch which he had sent to General Schenck on the 19th instant, and in which Mr. Fish expressed his surprise that Her Majesty's Government should object so much to a decision by the Tribunal of Arbitration at Geneva on the matter of the indirect claims; for that it must be aware that the United States Government neither expected nor desired a money-award on account of those claims, and that the United States were quite as much interested as Great Britain in obtaining from the Tribunal a decision adverse to those claims. The tone of the dispatch was friendly and conciliatory, and was evidently intended to contribute to bringing about an agreement upon the question at issue. Indeed, I gathered that the part of the draught which was not read to me contained a distinct proposal upon the subject. I fear, however, that this dispatch will reach General Schenck too late for practical purposes.

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[1] The substance of this dispatch was received by telegraph on the 27th of April.

Mr. Fish told me that Mr. Adams left New York for England on the 24th instant, and that, on his arrival there, he would convince your Lordship, though unofficially, that he was entirely opposed to the principle of claims for consequential damages.

But, during the whole conversation, Mr. Fish betrayed anxiety that the Treaty should not be allowed to break down, and frequently expressed his hope that your Lordship would suggest some means of disposing of the indirect claims, which would at the same time satisfy Her Majesty's Government and would be possible for that of the United States; for he said that, even if the latter was not justified in ever having presented those claims—which he could not admit—it was impossible for it now to recede or withdraw them, unless it should obtain a *quid pro quo.* If Her Majesty's Government was really anxious that the provisions of the Treaty should be carried out, which I earnestly assured him certainly was the case, why, he asked, should not your Lordship, in your answer to his dispatch, now on its way, state that, as the United States Government had made it evident that it did not desire a money-award on account of the indirect claims, but merely a decision on their merits by the Tribunal, Her Majesty's Government would consent never to present such indirect claims, under similar circumstances, when England might happen to be a belligerent, and would allow the abstract question to be decided for the benefit of both parties, if the United States Government would engage not to ask for a money-award on the indirect claims from the Tribunal at Geneva.

Mr. Fish asked my opinion upon this suggestion; but I replied that it was impossible for me to imagine what Her Majesty's Government might think of such a mode of arrangement, which I had now heard from him for the first time, and upon which I could not possibly have received any instructions from your Lordship. Upon his urging, however, that I should let him know my private feeling on the subject, I said that, with some modifications, I thought it possible that it might form the basis of an arrangement, and that I would have no objection to telegraph the substance of his communication to your Lordship. But I asked whether the President would be able to agree to such an arrangement without receiving the sanction of the Senate to it. Mr. Fish replied with confidence that he could do so, for that it would be merely an agreement as to the regulation of the mode of reference to the Tribunal, which was entirely in the hands of the Executive.

Immediately after my interview with Mr. Fish on the 25th instant, I found, in the evening newspaper, allusions to what he had suggested, and coupled with it a statement that the President disagreed with Mr. Fish upon the subject. The latter paid me a visit on the afternoon of the 26th instant, and assured me that the President was entirely in accord with him as to the possibility of an arrangement on the basis to which he had alluded in his conversation of the previous day; and he begged me to assure you that he was fully supported by the President.

During this visit I pointed out to Mr. Fish that, in case the suggestions made by him were taken into consideration, the United States Government would probably be expected to engage on its part that it would never again make such claims against England as a neutral as had recently been presented in its Case. Mr. Fish replied that, as a matter of course, it never would do so, but that to take a formal engagement to that effect would involve the necessity of an application to the Senate.

No 24.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 2, 1872.

Lord Granville proposes the following as the introductory part of the note submitted to you by my telegram of the 30th ultimo:

> I have laid before my colleagues the dispatch addressed to you by Mr. Fish on the 16th ultimo, of which you furnished me with a copy on the 1st instant. I informed you, in my letter of the 20th of March, that Her Majesty's Government, in communicating to you the grounds on which they hold that the claims for indirect losses are excluded from the scope and intention of the reference to the Tribunal of Arbitration at Geneva, did not wish to commence a diplomatic controversy, but merely to comply with the desire substantially expressed by the Government of the United States to be advised of the reasons which had prompted the declaration made by me on behalf of Her Majesty's Government on the 3d of February. Her Majesty's Government are still of the same mind; and although they cannot admit the force of the partial rejoinder which Mr. Fish has made to that statement of their reasons, they agree with Mr. Fish in seeing no advantage in the continuance of an argumentative discussion on the subject. It will, however, be understood that, if I do not review the matter of Mr. Fish's dispatch, it is not from an assent to his positions, but from the hope that a way may be found, without prejudice to the arguments heretofore advanced by Her Majesty's Government, to avoid further controversy. In the full expectation, therefore, that an arrangement satisfactory to both countries will be accepted by the Government of the United States, I proceed to state the views of Her Majesty's Government.

SCHENCK.

[From British Blue Book North America, No. 9, (1872,) p. 4.]

No. 25.

Earl Granville to Mr. Thornton.

FOREIGN OFFICE, *May* 2, 1872.

SIR: With reference to my dispatch of the 29th ultimo, I transmit to you herewith copies of a further private letter to General Schenck, and its inclosure.

I am, &c.,

GRANVILLE.

[Inclosure 1.]

Earl Granville to General Schenck.

[Confidential.]

FOREIGN OFFICE, *May* 2, 1872.

MY DEAR GENERAL SCHENCK: According to your request I send you the proposed preface to the words which I have already communicated to you, embodying the proposal, based on your suggestions, which we are prepared to make to the Government of the United States, on condition of our being previously informed of their assent, and of the form in which that assent will be given being satisfactory to us.

Yours, &c.,

GRANVILLE.

[For inclosure 2 in No. 25, see p. 483.]

No. 26.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *May* 4, 1872.

The President regrets that Her Majesty's Government have not thought proper to make the proposal mentioned in my telegram to you of 27th April, which this Government had been led to hope might afford a solution of the differences between the two Governments with regard to the arbitration now pending under the Treaty of Washington. The nature and terms of the proposition contained in your telegram of 30th April are such that it cannot justify his assent.

He cannot assent to any proposition which by implication or inference withdraws any part of the claims, or of the Case of this Government from the consideration of the Tribunal. The British Government proposes that the views heretofore presented by them, that certain of the claims put forth by the United States are not within the province of the Tribunal, be continued as their principle of action and conduct, and that in recognition of such principle an assurance be reciprocally given by both parties.

The United States do not entertain the views thus presented by Her Majesty's Government, and cannot enter into an assurance on the basis of such principle. The proposal limits the agreement of the British Government to a stipulation not to advance claims of that nature in similar cases and similar circumstances. No two cases are similar, and circumstances similar to those arising during the rebellion cannot occur to Great Britain; consequently the terms of the proposed agreement guarantee nothing to this Government.

The proposal prevents any expression of opinion or of judgment by the Tribunal on the class of claims referred to, and thus virtually denies what this Government believes—that the Tribunal has jurisdiction over all the claims which have been put forth. Under these circumstances the President is compelled to adhere to the opinion that it is within the province of the Arbitrators at Geneva to consider all the claims, and to determine the liability of Great Britain for all the claims which have been put forward by the United States.

FISH.

No. 27.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 5, 1872.

Your telegram of yesterday received to-day.

Will endeavor to see Granville to-night or early to-morrow. Will urge him to modify his proposal in accordance with your views. Will you examine it, including introductory paragraphs as given in my telegrams of April 30 and May 3, and, taking it for a basis, suggest exactly what modifications would make it possible for the President to assent to it? Also give me draught of such reply as you would be willing to make. I am confident this Government will not agree to the last paragraph of your telegram of April 27. They may agree that if the United States will engage not to press for award for indirect damages, nothing need be said about any modification of the original Case, nor whether such agreement is a withdrawal or not a withdrawal of any part of that Case. Rather than agree to submit the indirect claims to the judgment of the Tribunal, I apprehend this Government, backed by Parliament, would cease negotiation and make an absolute declaration against proceeding with the arbitration. Could the President assent to their offer if I can get the following substitute for what I telegraphed April 30?

> Her Majesty's Government are now ready to state that if the United States will and do agree not to press for a pecuniary award before the Tribunal of Arbitration at Geneva, on account of claims for indirect losses or damages, namely, the increased premiums of insurance, the transfer of American shipping, and the prolongation of the war, then Her Majesty's Government will and do, on their part, engage and stipulate that, should Great Britain at any time in the future be a belligerent while the United States is a neutral; and should there be any failure on the part of the United States to observe their neutral obligations, Great Britain will make or advance no complaints or claims against the United States by reason or on account of any indirect, remote, or consequential results of such failure. This rule, or principle, not to advance or press complaints or claims for indirect, remote, or consequential damages, to be mutually and reciprocally observed by both parties in the future. The notes which are exchanged on this subject to be presented to the Tribunal of Arbitration and entered on its record.

SCHENCK.

No. 28.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 6, 1872.

Had two hours' discussion with Granville last night. To-day he hands me, as the result of conference with his colleagues, the following amended proposal. Compare it with their former offer and inform me how far you can assent or must object. I told him I thought it not modified so as to be yet satisfactory, but agreed to submit it to you.

> Her Majesty's Government are ready to engage that, in the event of the Government of the United States agreeing that the Arbitrators are not to have regard, in any award that they may make, to the claims for indirect losses, namely, the transfer of the American shipping, the increased premiums of insurance, and the prolongation of the war, Her Majesty's Government will, on their part, agree that the view which they have heretofore presented of such claims shall be their principle of future action and conduct; and they are ready, in pursuance of the recognition of such principle, to give assurance to the United States that if Great Britain should at any time hereafter be a belligerent while the United States are neutral, Great Britain will never advance any claims inconsistent with that principle, such an engagement for the future being reciprocally given by both parties; the notes which are exchanged on this subject to be presented to the Tribunal of Arbitration and entered on its records.

In the prefatory paragraphs he strikes out, at my suggestion, the words "without prejudice to the arguments heretofore advanced by Her Majesty's Government."

Received at 1.20 a. m. SCHENCK.

No. 29.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *May* 6, 1872.

Your telegram received during the night.

An agreement which is to bind the future action of this Government can be made only by treaty, and would require the assent of the Senate.

Should the Tribunal decide that a nation is not responsible in pecuniary damages for the consequential results of a failure to observe its neutral obligations, such decision could not fail to be regarded as settling the question between the two Governments in the future.

If the British Government desire to open negotiations to define by treaty the extent of liability for consequential damages resulting from a failure of observance of neutral obligations, the President will carefully consider any proposals in that direction.

FISH.

[From British Blue Book "North America," No. 9, (1872,) p. 5.]

No. 30.

Sir E. Thornton to Earl Granville.[1]

[Extract.]

WASHINGTON, *May* 6, 1872. (Received May 20.)

I called upon Mr. Fish on the 2d instant and learned from him that he had on the previous day received a telegram from General Schenck, which, however, was so unintelligible that he had been obliged to telegraph back that it should be repeated.

Mr. Fish, however, seemed to have made out enough of the telegram to have discovered the wish of Her Majesty's Government that the claims for indirect damages should not be submitted at all to the Tribunal of Arbitration even as an abstract question, or for the purpose of obtaining an opinion upon them. With reference to this point Mr. Fish said that it was impossible for the United States Government to agree to withdraw those claims, though it might consent to ask no money compensation for them; for that, even if it were true that it was in error in supposing that they were included in the Treaty, though he insisted that they were so included, no nation which had any respect for itself could consent to withdraw claims which had been formally presented after due reflection.

Mr. Fish told me that he should, after consulting with the President, instruct General Schenck that, however anxious his Government was that the arbitration should proceed, it could not recede from any part of the Case which had been presented to the Tribunal.

On the following day the President desired one of his secretaries to write to the republican members of the Committee on Foreign Relations of the two Houses, requesting them to meet him at the State Department on the next day. The democratic members of the committees were omitted from the invitation.

The question of the indirect claims was discussed, but it has been impossible to ascertain precisely what decision, if any, was come to.

I saw Mr. Fish this evening at his own house, when he referred to the telegram which he had received on the 1st instant from General Schenck, and said that Her Majesty's Government required that the United States Government should formally acknowledge that the indirect claims were not within the scope of the arbitration. This, he said, was impossible, because they had been presented to the Tribunal under the firm conviction that they were included in the Treaty. Wishing, however, to do his utmost that the arbitration might continue, he had yesterday instructed General Schenck, that if Her Majesty's Government were disposed to negotiate for a reciprocal agreement, that each party as a belligerent should abstain from demanding compensation for indirect damages from the other being neutral, the President would take the matter into his serious consideration with an earnest desire to meet the views of Her Majesty's Government.

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[1] The substance of this dispatch was received by telegraph on the 3d of May.

[From British Blue Book "North America," No. 9, p. 6.]

No. 31.

Earl Granville to Sir E. Thornton.

[Extract.]

FOREIGN OFFICE, *May* 6, 1872.

With reference to my dispatch of the 2d instant, I have to state to you that General Schenck informed me last night of the instructions he had received from Mr. Fish.

In the first place, he mentioned an objection which had occurred to himself. He thought that the sentence "without prejudice to the argument heretofore advanced by Her Majesty's Government," ought to be "without prejudice to the arguments heretofore advanced by either party."

It did not appear from what he said that Mr. Fish objected to the preface—at least, has not criticised it.

I observed that the preface was ours, and did not commit the United States Government.

General Schenck then proceeded to say that Mr. Fish objected to embodying in the proposal the declaration that "Her Majesty's Government adhere to their view that it is not within the province of the Arbitrators to consider or to decide upon the claims for indirect losses, viz, the transfer of the American shipping, &c."

Mr. Fish considers that it is not necessary to insert in a statement, of what is to be agreed upon, an insertion as to the principle on which the two parties differ. The United States Government could not, in his opinion, enter upon a basis of an agreement recognizing a principle of conduct and action which they do not admit.

Mr. Fish also objected to the phrases "in similar cases and similar circumstances." No two cases are similar, and circumstances similar to those arising during the rebellion in America cannot occur in Great Britain. Consequently, the terms of the proposed agreement guarantee nothing to the United States. He prefers the language which he used, "that Her Majesty's Government stipulates for the future, that should Great Britain be a belligerent, and the United States a neutral, and should there be any failure on the part of the United States to observe their neutral obligations, Great Britain will make or advance no complaints or claims against the United States by reason or on account of any indirect, remote, or consequential damages, the result of such failure."

General Schenck said he preferred that language. I replied that I could not agree with him in this respect, but I thought the words which I had given to him before he dictated to me his scheme of a draught note would meet this objection.

Mr. Fish adheres to having some expression of opinion from the Arbitrators as to the admissibility of indirect claims, insisting that it is within the jurisdiction of the Tribunal to consider that question.

He insists also that there shall be nothing from which it is to be implied that any part of the United States Case is withdrawn. General Schenck then said that he wished to make a suggestion, although without instructions. I observed that there must be a limit to these suggestions stated to be without instructions.

He believes that the whole thing may be simplified by stripping the proposal of all that is unnecessary, and preserving that which is agreed between the parties, without a statement of the views of either or the claims of either. He could understand why Mr. Fish objects to having it declared that there is any withdrawal of any part of the Case; but if the thing be virtually done, why, General Schenck observed, give it a name?

But he also understood why Great Britain, making an agreement which amounts to a settlement on this point, should not want—or consent to ask—the opinion of the Arbitrators on that agreement. He had draughted a brief statement of the mutual proposal which he submitted to me, and would also ask Mr. Fish if it were possible for the President to assent to it, if presented by Her Majesty's Government in this form, as a substitute for that already communicated to him.

He did this without obtaining for it Mr. Fish's instructions, and for the present therefore entirely confidentially. General Schenck proceeded to read the following statement:

> Her Majesty's Government are now ready to state that if the United States will and do agree not to press for a pecuniary award before the Tribunal of Arbitration at Geneva, on account of claims for indirect losses or damages, viz, for the increased premiums of insurance, the transfer of American shipping, and the prolongation of the war, then Her Majesty's Government will and do engage, on their part, and stipulate that should Great Britain at any time in the future be a belligerent while the United States is a neutral, and should there be any failure on the part of the United States to observe their neutral obligations, Great Britain will make or advance no complaints or claims against the United States by reason or on account of any indirect, remote, or consequential results of such failure. This rule or principle not to advance or press complaints or claims for indirect, remote, or consequential damages, to be mutually and reciprocally observed by both parties in the future.
>
> The notes which are exchanged on this subject to be presented to the Tribunal of Arbitration, and entered on its record.

I told General Schenck that I could not give him any formal answer without consulting my colleagues; but I desired to impress upon him that, individually, I was perfectly convinced such a draught would not further in any degree the negotiation. He observed that it had no official character; that it was only a suggestion of his own, and that it would only have validity if agreed to by Her Majesty's Government and by Mr. Fish. He continued to say, that the only chance of an agreement was for each party to consider what modifications each should make with a view to an approximation; and that this would be more easily arrived at by leaving out all unnecessary matter. I told him that, generally speaking, I was sure my colleagues did not desire to introduce any unnecessary words. They only desired that the meaning of what was agreed upon should be perfectly clear; that no possible misunderstanding should arise. For instance, the words which he preferred as to not pressing for a pecuniary award, instead of those proposed by us, "not to have regard . . . to," &c.; if there was no *arrière pensée*, what could be the objection to the latter?

General Schenck repudiated the idea that there could be an *arrière pensée*, and he himself thought the two phrases came substantially to the same thing, but that his instructions adhered to the first. He did not understand how his words, if communicated to and recorded by the Arbitrators, would admit of a doubt.

He hoped we should take his draught, modifying it as little as was possible for us to do. He had telegraphed to Mr. Fish everything that I had communicated to him. He had asked Mr. Fish to tell him whether he on his part would agree to the note of which he had just given me a copy; and he had begged him to send him back our draught altered as he wished it to be, and the form of assent which Mr. Fish was ready to give.

[From British Blue Book "North America," No. 9, (1872,) p. 7.]

No. 32.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 6, 1872.

SIR: With reference to my other dispatch of this day's date, I transmit to you herewith, for your information, a copy of a revised draught which I gave confidentially to General Schenck, after consultation with the Cabinet.

I pointed out to him that we had left out the sentence objected to by him, "without prejudice," &c., on condition that no converse proposition should appear in the answer from Mr. Fish.

That we had omitted the whole of the sentence objected to by Mr. Fish, "Her Majesty's Government adheres," &c.

That we had left out the words, "in similar cases and in similar circumstances," and have further modified the sentence as to the principle which will bind both nations for the future.

That we had adopted General Schenck's last paragraph.

General Schenck said he would telegraph the revised draught this evening, but would give no opinion on it.

I am, &c.,

GRANVILLE.

Inclosure in No. 32.

Draught of letter from Earl Granville to General Schenck, as given to General Schenck by Earl Granville, May 6, 1872.

SIR: I have laid before my colleagues the dispatch addressed to you by Mr. Fish on the 16th ultimo, of which you furnished me with a copy on the 1st instant.

I informed you in my letter of the 20th of March last that Her Majesty's Government, in communicating to you the grounds on which they hold that the claims for indirect losses are excluded from the scope and intention of the reference to the Tribunal of Arbitration at Geneva, did not wish to commence a diplomatic controversy, but merely to comply with the desire substantially expressed by the Government of the United States to be advised of the reasons which had prompted the declaration made by me on behalf of Her Majesty's Government on the 3d of February.

Her Majesty's Government are still of the same mind, and although they cannot admit the force of the partial rejoinder which Mr. Fish has made to that statement of their reasons, they agree with Mr. Fish in seeing no advantage in the continuance of an argumentative discussion on the subject.

It will, however, be understood that if I do not review the matter of Mr. Fish's dispatch it is not from an assent to his positions, but from the hope that a way may be found to avoid further controversy.

In the full expectation, therefore, that an arrangement satisfactory to both countries will be accepted by the Government of the United States, I proceed to state the views of Her Majesty's Government.

Her Majesty's Government are ready to engage that, in the event of the Government of the United States agreeing that the Arbitrators are not to have regard in any award that they may make to the claims for indirect losses, viz, the transfer of the American shipping, the increased premiums of insurance, and the prolongation of the war, Her Majesty's Government will, on their part, agree that the view which they have heretofore presented of such claims shall be their principle of future action and conduct, and they are ready, in pursuance of the recognition of such principle, to give assurance to the United States, that, if Great Britain should at any time hereafter be a belligerent while the United States are neutral, Great Britain will never advance any claims inconsistent with that principle; such an engagement for the future being reciprocally given by both parties. The notes which are exchanged on this subject to be presented to the Tribunal of Arbitration, and entered on its record.

No. 33.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *May* 7, 1872.

The President earnestly desires to do everything consistent with his duty to the country and with the great interests to the future of both Governments, and to the principles so important to civilization as are involved in the Treaty, to avoid the possibility of its failure. This Government is of opinion that the submission of what are called the indirect claims is within the intent of the Treaty, and that the consideration of those claims is within the province of the Tribunal. The President alone has not the power to change or alter the terms or the principles of a treaty. He is of the opinion that the suggestion expressed in my instruction of 27th April went to the extent of his authority, acting without the assent of the Senate. The proposal submitted in your telegram of last evening is based upon a theory antagonistic to this principle.

The President is anxious to exhaust all proper efforts to reach a settlement of the important questions and the vast interests to two States, submitted to the Tribunal of Arbitration, if it can be done without the sacrifice of a principle and consistently with the dignity and the honor of the Government.

He will, therefore, be willing to consider, and, if possible, will present for the consideration of the Senate, any new article which may be proposed by the British Government, which, while it settles the principle involved in the presentation of what are called the indirect claims, will remove the differences which have arisen between the two Governments in their constructions of the Treaty.

FISH.

No. 34.

General Schenck to Mr. Fish.

[Telegram—Extract.]

LONDON, *May* 7, 1872.

Your telegram of yesterday was received this morning.

After some discussion, Lord Russell's motion was postponed yesterday to next Monday, on Lord Granville's promise that on or before that day he would produce the correspondence or make a statement as to the position of the negotiations now going on. This was only acceded to upon a distinct assurance being given that the Government would not retract its position, that the claims for indirect damages are not within the intention and scope of the reference. To this I am sure they will adhere if no agreement or adjustment be made between now and next Monday. I have little doubt that they will make a declaration which will be decisive against submission to arbitration, and will have the nearly, if not quite, unanimous support of both Houses of Parliament. Desirable and important as it is to both parties and to all nations to have a decision of the Arbitrators, that a nation is not responsible in pecuniary damages for consequential results of failure to observe neutral obligations, I see no chance of getting this Government to agree in terms to a submission so as to obtain such decision; they will not consent to unite in asking the Tribunal for an opinion on the question, although we assure them that we expect, and they have every reason to feel confident, that that opinion would be against affirming such national responsibility.

The above portion of this telegram I have read to Lord Granville, and have his admission that it is a correct statement. May I hope that if you do not mean to decide that no other way can be found out of the controversy, and therefore the arbitration and Treaty must fail, you will conclude to instruct me explicitly on their proposals communicated to you in my telegrams of the 5th and 6th?

* * * * * * * *

SCHENCK.

[From British Blue Book "North America," No. 9, (1872,) p. 8.]

No. 35.

Earl Granville to Sir E. Thornton.

[Extract.]

FOREIGN OFFICE, *May* 7, 1872.

General Schenck called on me to-day, and read to me a telegraphic message from Mr. Fish, of which he did not give me a copy, but the substance of which was to the following effect:

An agreement to bind for the future would seem to require the assent of the Senate, but if the Arbitrators were to give a decision on the case which is now before them it would be settling the question for the future.

If, under these circumstances, the British Government want to open negotiations for defining the extent of liability for consequential damages resulting from a failure of observance of neutral obligations, the President would consider carefully any proposal in that direction.

I told General Schenck that the only meaning I could attribute to the message was, that Mr. Fish maintained the position to which General Schenck was aware Her Majesty's Government could not assent.

General Schenck then proceeded to read me a draught of a message which he had sent.

The message described what had passed in the House of Lords on the 6th instant correctly up to a certain point, but made some statements as to the assurances of the Government which were not accurate. He stated that the motion of Lord Russell had only been deferred on the assurance of the Government that we would not appear before the Tribunal of Arbitration unless some settlement was previously made.

It went on to declare his conviction that we should adhere to this resolve; that Lord Russell's motion would be carried nearly unanimously. And he further declared, while recapitulating the reasons why the matter should be referred to arbitration, viz, in order to have the matter finally settled, and that it was certain that the Arbitrators would decide against the indirect claims, yet the English Government would never allow the indirect claims to be submitted to Arbitration.

He stated he believed his message was correct. I said that I had no objection to tell him that the statement of what had passed in the House of Lords was not historically accurate, as I had only given the assurance that I had nothing to withdraw or retract from what I had said last year or this in Parliament.

As to his view of the course which Her Majesty's Government were likely to take, he was aware that while I had avoided anything which might be quoted as an official menace, he had himself frequently told me that he was perfectly aware, from the tone of my language, of the resolution of Her Majesty's Government to refuse to submit the indirect claims to Arbitration, and that I had therefore no wish to object to his giving his own opinion to his Government.

No. 36.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *May* 8, 1872.

All the propositions made by the British Government involve covertly, probably without design, what this Government cannot agree to, namely, the withdrawal from the province of the Tribunal what we believe to be entirely within their competence. I need not repeat our conviction that the Arbitrators have the right to decide whether the claims to which Great Britain objects are or are not admissible, and that the United States will be content to abide their decision, whether favorable or adverse to that class of claims.

The proposition of the British Government is upon the basis that the view which they have heretofore presented shall be a principle of future action and conduct. The view which they have presented is not a principle, but an opinion as to the construction of a specific treaty, and is applicable only to one pending difference on an incidental and temporary question, and cannot be a principle of future action. This Government holds a directly opposite view with regard to the competence of the Tribunal to consider the validity of the claims, and, although sincerely desirous of coming to an honorable understanding, cannot adopt the British view, or make it the basis of a reciprocal engagement.

In my telegram of yesterday I explained that the President cannot, and will not, withdraw any part of what has been submitted within his construction of the intent and spirit of the Treaty. If the British Government persists in their demand, the responsibility of whatever failure of the Treaty may ensue must rest with them, as you will have advised them of the impossibility, resulting as well from the constitutional inability of the President to withdraw what this Government is of opinion has been submitted within the intent and meaning of the Treaty, as from his unwillingness to compromise the rights and the dignity of the Government by yielding to a demand not founded on right or sustained by any valid construction of the Treaty.

He hopes, however, that the British Government may see the way to maintain the Treaty in the suggestion of a new article, as mentioned in my telegram of yesterday. Should they not adopt this suggestion, the inference will be almost unavoidable that they have deliberately determined to abrogate the Treaty. If, however, they adopt the suggestion, you may say that the probability is that Congress will adjourn about the latter part of this month. Time may be saved, therefore, if negotiations on this point should be conducted here rather than in London. If they desire such negotiations, it may be advisable to save time that they give instructions to their Minister here.

You will keep me advised as to the probable action of the British Government, so that the President may communicate the correspondence to Congress on Monday, in case the British Government intends to break the Treaty.

FISH.

[From British Blue Book "North America," No. 9, (1872,) p. 9.]

No. 37.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 8, 1872.

SIR: With reference to my dispatch of yesterday, I have to state to you that I received a note from General Schenck this morning, asking me to postpone the Cabinet, as he had just received a long telegraphic message in cipher from his Government, of the substance of which he would inform me at the Foreign Office at half-past 3 o'clock.

General Schenck accordingly called upon me in the afternoon, and informed me that the United States Government claim, and insist upon their claim, that under the Treaty the claims for indirect losses which have been put forward are admissible to be considered by the Arbitrators, although they do not expect, and never have expected, a pecuniary award of damages for such claims. Great Britain denies that such claims come within the scope or province of the Arbitrators to consider or decide upon.

The argumentative discussion has ended, leaving each party adhering to their position.

The United States Government in this condition of things have been willing to accept a proposal from Great Britain, that, in consideration of not pressing for a pecuniary award on these indirect claims, Great Britain would, on her part, agree to engage not to advance in the future in any case when she should be a belligerent, and the United States neutral, such claims for indirect damages as are put forward by the United States Government in the Case presented on their behalf to the Tribunal of Arbitration at Geneva, and to make that reciprocally the rule for the future. Great Britain is understood to object to this, on the ground that an agreement not to press for compensation for these indirect claims is not sufficient, because the Arbitrators in that case might themselves proceed to take them into consideration, and make them the subject of an award, and therefore Great Britain has only been willing to establish the rule in regard to indirect damages on condition that the American part of the Case at Geneva, which puts forward these particular claims, should be entirely withdrawn from the consideration of the Arbitrators. The President holds that he has power to give instructions in regard to the management of the case before the Arbitrators, and therefore could direct that these claims should not be pressed for an award. But, inasmuch as the Government of the United States hold that the claims are admissible to be considered by the Arbitrators under the Treaty, he cannot withdraw the claims as not being rightfully put forward without its being such an alteration of the terms and principles of the Treaty as is inconsistent with his understanding of it, and the interpretation which has been put upon it by his Government.

The treaty itself, however, may be amended in such a manner as to accomplish the object, and remove all differences between the two Governments arising out of their different interpretations of its provisions.

General Schenck is, therefore, authorized to state that the President will be willing to consider, and, if possible, will present for the consideration of the Senate any new article for the Treaty which may be proposed by the British Government, which, while it settles the principle involved in the presentation of what are called the indirect claims, will remove the differences which have arisen between the two Governments in the consideration of the Treaty.

The President is earnestly desirous to do everything consistent with his duty and with the great interest for the future of both countries, and to preserve principles so important to civilization as he thinks are involved in the Treaty of which he is anxious to prevent the failure, and to this end he is willing to exhaust all proper efforts as far as can be done without abandoning any principle, and consistently with the honor and dignity of both Governments.

General Shenck said he had no instruction to suggest anything in relation to the form of words in which such an offer by Great Britain might be embodied. But it seems to him there might be three modes of framing such an amendment to the Treaty, either of which would accomplish the object.

1st. It might be recited that whereas differences of opinion have arisen between the two countries in relation to the interpretation of the Treaty of Washington as it relates to the right of the United States to put forward before the Tribunal of Arbitration at Geneva a claim for certain damages which, in their Case, are denominated indirect damages, in consideration of the withdrawal of those claims from the Case and from the consideration of the Arbitrators, Great Britain engages with the United States that she will not at any time hereafter, in the event of the United States being a neutral when Great Britain is a belligerent, advance any complaint or claims for such indirect, remote, or consequential damages arising from any failure on the part of the United States in the discharge of her neutral obligations.

2d. Let the Article to be agreed upon leave out any reference to the Case which has been presented at Geneva, establish the rule as above, and the United States give instructions to its Agent to withdraw those indirect claims, reciting them particularly whenever an exchange of ratifications of the amendment to the Treaty shall be made; and a copy of these instructions to be communicated to Great Britain.

3d. Establish by agreement in the same manner a rule against indirect damages, and provide that such rule shall relate back to and be held and taken as a part of the Treaty of Washington, the same as if this Article had been executed at the date of that Treaty.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 9, (1872,) p. 10.]

No. 38.

Earl Granville to Sir E. Thornton.

[Extract.]

FOREIGN OFFICE, *May* 8, 1872.

With reference to my other dispatch of this day's date, I have to inform you that I saw General Schenck again after the meeting of the Cabinet, and told him that the Cabinet had considered the report which I made to them of our conversation of this morning, the message from Mr. Fish, and the three personal suggestions of General Schenck as to the mode of executing Mr. Fish's proposals.

I stated that they saw objections to the three modes proposed, and were not themselves prepared to frame an Article. They thought it would be better to return to the proposal of an interchange of notes. They understood that the proposal of an Article was intended by Mr. Fish to obviate a difficulty occasioned by the form of words as to the agreement which the United States was to make. They were willing to substitute for the words "having regard," &c., the words, "will not bring the indirect claims before the Tribunal" for consideration.

If required to do so, I could give some explanation of the principle "founded on the heretofore presented," &c.

No. 39.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 9, 1872.

Had interviews with Granville yesterday and last evening. Cabinet long in session. Instead of proposing new Article to Treaty, they prefer interchange of notes, and are willing to further modify their note. I shall tell Lord Granville this morning that in your telegram of April 27 you went as far as is possible to go without concurrence of Senate.

Just received your long telegram of yesterday, which is being deciphered. Will receive and forward no offer until I know what it contains.

SCHENCK.

No. 40.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 9, 1872.

In a long interview with Lord Granville, this evening, I fully presented and urged the reviews and positions contained in your telegram of yesterday. I find this Government makes a great and pparently insuperable objection to the adoption of a new Article, n the ground that the language describing consequential damages ust necessarily be so broad that it would probably commit both overnments beyond what they would either of them wish to be ound. They prefer an interchange of notes, because by that form hey can narrow the agreement so as to relate only to the actual points r subjects of difference. I have stated decidedly, as to any interhange of notes, that the President, without the assent of the Senate, ill not go beyond the suggestion made in your telegram of April 27. ord Granville seems to think that, so far as the difficulty for want of onstitutional power is concerned, the President might perhaps be illing to submit notes to the Senate for their advice. Would he do hat?

I asked Lord Granville, as you instructed me, to agree, in order to save ime, that negotiation on this point may be conducted at Washington, ut he declines. It would relieve me from a painful responsibility, inreased immeasurably by having to correspond through the difficult and nsatisfactory medium of the telegraph.

His Lordship's last words, after more than two hours' conversation, ere as follows:

> I carefully avoid anything like menace; but in consequence of the views and inormation you have presented to me yesterday and to-day, I take an unfavorable view f the chances of any settlement.

I told him I was getting to be of the same mind.

SCHENCK.

No. 41.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 9, 1872.

Lord Granville proposes to modify his amended note, I telegraphed ou on the 6th, by substituting "They will not bring for consideration he indirect claims before the Arbitrators," for the words "The Arbirators are not to have regard, in any award they may make, to the laims for indirect losses."

I promised him I would submit the change to you, but thought it ould be considered more objectionable than before, inasmuch as the nited States insist that those claims are now rightfully before the ribunal.

SCHENCK.

[From British Blue Book "North America," No. 9, (1872,) p. 11.]

No. 42.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 9, 1872.

SIR: General Schenck came to me to-day and said that he had conidered the communication which I had made to him yesterday evening, nd of which I informed you in my dispatch of that date.

He expressed his regret that the Cabinet see so much objection to an attempt to settle the difference by a new Article to be added to the Treaty. He had explained to me the difficulty about pursuing the plan of a settlement by an interchange of notes in his statement made to me yesterday, and he desired to do so more explicitly this morning.

It consisted in the decided opinion of the President that he had gone as far as he possibly could without the assent of the Senate in the suggestion of the character of such a note as would be acceptable or assented to by him, in the telegram of the 27th of April. The note presented for his consideration on the part of Her Majesty's Government, originally and as afterwards modified, involves what the Government of the United States cannot agree to, a withdrawal from the province of the Tribunal of what that Government believes to be entirely within its competence to consider, as the Government of the United States have been unable to accede to the proposal as contained in either of the forms of notes submitted by Her Majesty's Government; it is on that account regretted that they have not yet seen that they could consent to propose a form for a new Article to the Treaty, which, while it would remove the whole difficulty, would at the same time have the concurrence, if it were agreed to, of the Senate as well as of the President, constituting the whole Treaty power of the United States.

The President, he added, had instructed him to say that he cannot withdraw himself any part of what has been submitted within his conception of the intent and spirit of the Treaty. This he cannot do from his constitutional inability to recede from what the Government of the United States is of opinion has been submitted within the intent and meaning of that instrument. If the British Government should make a demand that it should be so withdrawn, the responsibility the President feels of any failure of the Treaty, which he wishes to preserve and maintain, would be upon them. The President hopes, however, that as the two Governments have not been able to come to an agreement on account of these difficulties, as to notes being interchanged for the accomplishment of this purpose, the British Government may yet see their way to maintain the Treaty in the suggestion of a new Article, as mentioned or suggested in the telegram of yesterday. If they adopt that suggestion, he was directed to say that Congress will adjourn about the latter part of this month, and that time may be saved, therefore, if negotiations on this point should be conducted at Washington rather than in London. If Her Majesty's Government desire such negotiation at Washington, it might be advisable, in order to save time, to furnish you with instructions.

I expressed my fears that this telegraphic message did not give any hope of a settlement. Her Majesty's Government saw great objections to a new Article. The words used by Her Majesty's Government, "in similar cases and similar circumstances," had appeared to the United States Government as too narrow. The words General Schenck proposed, as suggested in the telegram from Mr. Fish, made the Rule too broad. There was great disadvantage in laying down a rule of vast import, of which neither Government could without the greatest consideration foresee all the possible applications. Was General Schenck sure that such a rule would not exclude many of the claims called direct put into the American Case?

General Schenck spoke of the importance of a new Article in order to correct the Treaty.

I observed that such an argument would be an additional reason for us to object to it, as we should thereby imply that we thought the Treaty required amendment.

General Schenck explained, that what he meant was that if such a rule had been inserted in the Treaty originally, then there would have been no such difficulty as has now arisen, and so if an amendment were made now, providing for such a rule, and relating back to the Treaty so as to become a part of it, all the difficulty that has grown up would fall to the ground. He also said, as to the proposal to modify our note so as to substitute for the words "not to have regard," &c., the words "will not bring the indirect claims before the Tribunal," that such a modification would only make the language more objectionable; for that what his Government claims is that these claims are now rightfully under the Treaty before the Tribunal, and the question is not whether the United States shall bring them there, but whether anything can be devised which may remove them from the consideration of the Arbitrators.

I said I understood that the President considered the Treaty included the indirect claims, but that he had only exercised an administrative act in directing that these claims should be put forward in the Case; that it would be simply another administrative act to direct that the Agent should not press for a pecuniary award, but that to adopt our words "not to have regard," &c., would go beyond his constitutional powers.

If, however, the Senate was willing to consent to give powers to the President, which he deemed that he did not now possess, by the adoption of a new Article, what was his objection to obtaining their consent to an interchange of notes?

I was sure Her Majesty's Government would feel great objection to interrupting the course of negotiation by abruptly transferring it to Washington.

I concluded by saying that I carefully avoided anything that might be construed into menace, but, in consequence of the views and information he had presented to me yesterday and to-day, I took an unfavourable view of the chances of settlement.

I am, &c.,

GRANVILLE.

No. 43.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 10, 1872.

Lord Granville has this moment sent a message requesting me to telegraph you immediately that a Cabinet will be held this morning, and that he wishes me to meet him afterwards. This looks like reconsideration of what he said yesterday. I have come to the conclusion that they have two reasons for their conduct: One, an unwillingness on the part of Mr. Gladstone to seem to retract the extreme position he took at the beginning as to the interpretation of the Treaty; the other, an actual unwillingness to adopt any rule to limit claims against neutrals in the future, their only object being to get rid of a portion of the demands of the United States.

SCHENCK.

No. 44.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 10, 1872.

Lord Granville a few minutes since brought to me in person the following draught of an article which, if the Government of the United States think fit to adopt, will be accepted by Her Majesty's Government. I made no comment on it, but said I would telegraph it to you immediately:

Whereas the Government of Her Britannic Majesty has contended in the recent correspondence with the Government of the United States as follows, namely: That such indirect claims as those for the national losses stated in the Case presented, on the part of the Government of the United States, to the Tribunal of Arbitration, at Geneva, to have been sustained in the loss in the transfer of the American commercial marine to the British flag; the enhanced payments of insurance; the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion—firstly, were not included in fact in the Treaty of Washington, and further, and secondly, should not be admitted in principle as growing out of the acts committed by particular vessels, alleged to have been enabled to commit depredations upon the shipping of a belligerent, by reason of such a want of due diligence in the performance of neutral obligations as that which is imputed by the United States to Great Britain; and

Whereas the Government of Her Britannic Majesty has also declared that the principle involved in the second of the contentions, hereinbefore set forth, will guide their conduct in future; and

Whereas the President of the United States, while adhering to his contention that the said claims were included in the Treaty, adopts for the future the principle contained in the second of the said contentions, so far as to declare that it will hereafter guide the conduct of the Government of the United States, and the two countries are therefore agreed in this respect:

In consideration thereof the President of the United States, by and with the advice and consent of the Senate thereof, consents that he will make no claim on the part of the United States, in respect of indirect losses as aforesaid, before the Tribunal of Arbitration, at Geneva.

SCHENCK.

[From British Blue Book "North America," No. 9, (1872,) p. 12.]

No. 45.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 10, 1872.

SIR: General Schenck, at an interview with me this day, read to me a statement, which he subsequently gave to me, and of which I inclose a copy, summing up what he regarded as the present position of the question between the two Governments of the claims for indirect losses.

I said, in reply, that I received this paper as another proof of the desire which General Schenck had so persistently shown, while strongly supporting the views of his Government, to maintain the Treaty of Washington. There were some passages in it upon which I might make observations, but I thought the letter, which I was about to send to him, would prove to be the most practical and satisfactory answer. He would not fail to remark the labors which Her Majesty's Government had bestowed on an attempt to remove the obstacles to a satisfactory settlement of the misunderstanding which had arisen.

I am, &c.,

GRANVILLE.

[For inclosure in No. 45, see p. 516.]

No. 46.

General Schenck to Mr. Fish.

[Extract.]

No. 224.] LEGATION OF THE UNITED STATES,
London, May 11, 1872. (Received May 27.)

SIR: When I received last evening from Lord Granville the draught of the new Article which is proposed by Her Majesty's Government as a supplement to the Treaty of Washington, I hastened to communicate it to you by telegraph. This, with the labor of carefully preparing it to be transmitted in cipher, made it impossible to furnish in time for the mail of to-day, copies of the papers, less important in their character, which accompanied that draught. These accompanying papers consist of two notes with their respective inclosures, of all of which I send copies now.

The first is a note of the 10th instant, addressed to me by Lord Granville, recapitulating in a general and compendious way what had recently passed between us, and concluding with the information that although they think it belongs to the Government of the United States to frame the suggested Article, yet, in order to meet our wishes and to save any inconvenient delay, they would transmit a draught of an Article, which if the Government of the United States thinks fit to adopt will be accepted by Her Majesty's Government. Accompanying this note and appended to it are a copy of the draught or memorandum, in relation to a proposed exchange of notes on the subject, which was communicated to me on the 6th instant, and a copy of a memorandum which he made of one of our several interviews, being that of the 8th instant, when I communicated to him the substance of your telegram of the 7th, and informed him that the President would be willing to consider, and if possible would present to the Senate, any new Article which might be proposed by the British Government.

The second is the brief note from Lord Granville, also of the 10th instant, with which he transmitted the draught of the Article referred to in his first.

But the draught which he inclosed was not in fact and precisely, in terms, the one which I have telegraphed to you. After it had been copied and prepared to be sent in cipher, Lord Tenterden came in haste to the Legation from Lord Granville to recall it, and substituted the amended form which I forwarded to you. I preserve and send you a copy of the draught which was withdrawn, as well as of the one which was finally submitted, simply as marking a step in the progress of the negotiation.

As these two notes, with their inclosures, were of the same date, and delivered at the same time, I acknowledged the receipt of the whole together, stating that I would immediately transmit the Article to you by telegraph, and that I did not doubt it would be considered at once by my Government, and the result of that consideration communicated to me through the same medium, and with as little delay as possible and in the same friendly spirit in which the proposal of Her Majesty's Government had been offered. A copy of my note of acknowledgment is inclosed herewith.

This evening I have received from Lord Granville a note, for the first time formally acknowledging the receipt of your dispatch to me of the 16th of April, a copy of which I had communicated to him on the 1st instant. This note, although dated on the 6th, has obviously just been written, and is now delivered to me antedated in order to keep up the chronological sequence and logical connection of the correspondence. I transmit herewith a copy of it.

* * * * * * *

I have the honor to be, sir, your obedient servant,

ROBT. C. SCHENCK.

[Inclosure 1 in No. 46.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *May* 10, 1872.

SIR: In replying to the communication which you made to me on the 8th instant, I think it well to recapitulate the recent communication which I have had with you on the subject of the arbitration on the Alabama claims.

On the 29th of April you made an informal communication to me which you subsequently rendered official, informing me that a proposal made by this country on a certain basis would be acceptable. Her Majesty's Government thereupon decided to assume the initiative, and they framed upon that basis, as they understood it, the accompanying draught with a view to an exchange of notes.

This draught, which had been subjected to various alterations to bring it more closely in conformity with the views which you had expressed, and to make it, as they believed, more acceptable to the Government of the United States, was delivered to you on the 6th instant.

On the 8th instant you communicated to me a telegraphic message, apparently in reply to this draught, from your Government, of which I made the accompanying memorandum.

Her Majesty's Government are by this telegram invited to propose an Article in addition to or in amendment of the Treaty of the 8th of May, 1871.

The Treaty is, in the judgment of Her Majesty's Government, clear and sufficient, and excludes from the arbitration the claims for indirect losses advanced by the Government of the United States. It is therefore difficult for Her Majesty's Government to take the initiative in the manner the United States have proposed.

They think that it belongs to the Government of the United States, to whose friendly suggestions the communications which have taken place since the date of Mr. Fish's reply to my letter of the 20th of March have been due, to frame the suggested Article; yet, in order to meet their wishes and to save any inconvenient delay, I will transmit to you a draught of an Article which, if the Government of the United States think fit to adopt, will be accepted by Her Majesty's Government.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 2 in No. 46.]

Memorandum.

The United States Government claim, and insist upon their claim, that, under the Treaty, claims for the indirect losses which have been put forward are admissible to be considered by the Arbitrators, although they do not expect, and never have expected, a pecuniary award of damages for such claims. Great Britain denies that such claims come within the scope or province of the Arbitrators to consider or decide upon.

The argumentative discussion has ended, leaving each party adhering to their position.

The United States Government, in this condition of things, have been willing to accept a proposal from Great Britain that in consideration of not pressing for a pecuniary award on these indirect claims, Great Britain would on her part agree to engage not to advance in the future in any case, when she should be a belligerent and the United States a neutral, such claims for indirect damages as are put forward by the United States Government in the Case presented on their behalf to the Tribunal of Arbitration at Geneva, and to make that reciprocally the rule for the future. Great Britain is understood to object to this on the ground that an agreement not to press for compensation for these indirect claims is not sufficient, because the Arbitrators in that case might, themselves, proceed to take them into consideration and make them the subject of an award. And, therefore, Great Britain has only been willing to establish the rule in regard to indirect damages on condition that the American part of the Case at Geneva which puts forward these particular claims should be entirely withdrawn from the consideration of the Arbitrators. The President holds that he has power to give instructions in regard to the management of the Case before the Arbitrators, and therefore could direct that these claims should not *be pressed* for an award. But inasmuch as the Government of the United States hold that the claims are admissible to be considered by the Arbitrators under the Treaty, he cannot withdraw the claims as not being rightfully put forward without its being such an alteration of the terms and principles of the Treaty as is inconsistent with his understanding of it, and the interpretation which has been put upon it by his Government.

The Treaty itself, however, may be amended in such a manner as to accomplish the object and remove all differences between the two Governments arising out of their different interpretations of its provisions.

General Schenck is therefore authorized to state that the President will be willing to consider, and, if possible, will present for the consideration of the Senate, any new article for the Treaty which may be proposed by the British Government, which, while it settles the principle involved in the presentation of what are called the indirect claims, will remove the differences which have arisen between the two Governments in the consideration of the Treaty.

The President is earnestly desirous to do everything consistent with his duty and with the great interest for the future of both countries, and to preserve principles, so important to civilization as he thinks are involved in the Treaty, of which he is anxious to prevent the failure, and to this end he is willing to exhaust all proper efforts as far as can be done without abandoning any principle and consistently with the honor and dignity of both Governments.

[Inclosure 3 in No. 46.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *May* 10, 1872.

SIR: I have the honor to transmit to you herewith the draught[1] of an Article referred to in my preceding note of this day's date.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

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[1] For draught of the Article see p. 500.

[Inclosure 4 in No. 46.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, May 10, 1872.

MY LORD: I have the honor to acknowledge the receipt, at 4 o'clock p. m. to-day, of your note of this date, in which you take occasion to recapitulate some recent communications we have had with each other on the subject of the Arbitration on the Alabama claims, and to state briefly, according to your understanding and note of the transactions, what occurred subsequently in consequence of those communications. You refer to and furnish me at the same time with copies of a draught of a proposed note delivered to me on the 6th instant, and your memorandum of a conversation I had with you afterward, at an interview on the 8th instant, in which it was suggested to you to propose an Article in addition to, or in amendment of, the Treaty of the 8th of May, 1871.

This suggestion of a Treaty stipulation, you will remember, was made in consequence of the failure to obtain from you any draught of a note which, in the opinion of the Government of the United States, was in conformity with the proposal which Mr. Fish telegraphed to me on the 27th of April, as I informed you he was led to expect would be made.

Your Lordship proceeds to say that the Treaty is, in the judgment of Her Majesty's Government, clear and sufficient, and excludes from the Arbitration the claims for indirect losses advanced by the Government of the United States, and that it is therefore difficult for Her Majesty's Government to take the initiative in the manner the United States have proposed; that Her Majesty's Government think it belongs to the Government of the United States, to whose friendly suggestion the communications which have taken place since the date of Mr. Fish's reply to your letter of the 20th of March have been due, to frame the suggested article; but yet, in order to meet their wishes and to save any inconvenient delay, you will transmit to me a draught of an Article, which, if the Government of the United States think fit to adopt, will be accepted by Her Majesty's Government.

And I have also to acknowledge the receipt of another note of this date from your Lordship, which was delivered to me at the same time, inclosing the draught of an Article in the preceding one referred to.

I will hasten to communicate immediately by telegraph this draught to my Government; and I doubt not it will be considered at once, and the result of that consideration communicated to me through the same medium, and with as little delay as possible, and in the same friendly spirit in which your proposal is offered.

I have the honor to be, with the highest consideration, my Lord, your Lordship's most obedient servant,

ROBT. C. SCHENCK.

[Inclosure 5 in No. 46.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *May* 6, 1872.

SIR: I have the honor to acknowledge the receipt of Mr. Fish's dispatch of the 16th April, which you communicated to me on the 1st instant. I abstain from addressing any observations to you on the tenor of that dispatch pending the result of the communications which are now passing between us, and which it is the earnest hope of Her Majesty's Government may lead to a satisfactory settlement of the questions under discussion between our two Governments.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

No. 47.

The following dispatch was published in the supplement to the London Gazette, May 17, and communicated, in accordance with instructions from his Government, by Sir Edward Thornton, in a note dated May 31, 1872. (Received June 1.)

Earl Granville to Sir E. Thornton.[1]

FOREIGN OFFICE, *May* 13, 1872.

SIR: Her Majesty's Government have refrained from continuing an argumentative discussion with the Government of the United States upon the scope and intention of the Articles in the Treaty of Washington relating to the Arbitration on the "Alabama claims."

There are, however, some passages in Mr. Fish's dispatch on this subject of the 16th ultimo, upon which it seems desirable that, for your own information, and for use in any future communications with the Government of the United States, you should be put in possession of the views of Her Majesty's Government.

In the first place, Mr. Fish takes exception to the assertion in my letter of the 20th of March, that although it is true that, in some of the earlier letters of Mr. Adams, vague suggestions were made as to possible liabilities of this country, extending beyond the direct claims of American citizens for specific losses arising from the capture of their vessels by the "Alabama," "Florida," "Shenandoah," and "Georgia," no claims were ever defined or formulated, and certainly none were ever described by the phrase "Alabama claims," except these direct claims of American citizens.

Mr. Fish states that I cannot be disposed to intend more than to say that the claims for indirect or national losses and injuries were not "formulated" by the United States Government, and the amount thereof set forth in detail and as a specific demand.

I did not, however, confine myself to saying that no claims of this nature were ever defined or formulated, but added that no such claims have ever been "described" as "Alabama claims."

Mr. Fish admits that the claims for indirect or national losses were not formulated or defined, but proceeds to cite various passages in the correspondence in which he considers that they were brought forward. He does not mention one instance in which they were described as "Alabama claims."

The fact is that, throughout the correspondence, the representations made by the United States Government respecting the actual claims for injuries sustained by American citizens from the depredations of the "Alabama" and other cruisers were interspersed with complaints of the supposed premature recognition of the belligerent rights of the Confederate States by the issue of Her Majesty's Proclamation of Neutrality, and of the proceedings of blockade-runners.

Nearly all the passages cited by Mr. Fish will be found, when read with their context, to have reference to these complaints, and to the indefinite suggestions of liability founded on them. On the other hand, on turning to the Memorandum, inclosed in my letter of the 20th of March, it is apparent that the phrase "Alabama claims" has uniformly been used to distinguish the actual claims on account of the acts committed by the "Alabama" and the other cruisers from these complaints of the "attitude" assumed by Great Britain.

Mr. Fish lays great stress on the statement in Mr. Adams's letter of the 20th November, 1862, that he was instructed to "solicit redress for the *national* and private injuries already thus sustained." The injuries *thus* sustained were, as appears by the inclosures in Mr. Adams's letter, the destruction of the "Ocmulgee," and other vessels by the "Alabama." As already pointed out in the Memorandum, Mr. Adams spoke merely of the "depredations committed on the high seas upon merchant-vessels" by the "Alabama," and of "the right of reclamation of the Government of the United States for the grievous damage done to the property of their citizens," and referred to the Claims Commission under the Treaty of 1794 as a precedent for awarding compensation. There is not a word in the letter to suggest any indirect or constructive claims.

In the dispatch of the 19th of February, 1863, Mr. Seward, in a similar manner, uses the term "its claims" with obvious reference to the claims put forward by the United States on behalf of American citizens; those, indeed, being the only claims that had been indicated in the correspondence between Mr. Adams and Lord Russell to which he was alluding.

I must remark that this dispatch of the 19th of February, 1869, was not communicated to the British Government.

Mr. Fish has omitted some important words in the next passage which he adduces from Lord Russell's dispatch to Lord Lyons on the 27th of March, 1863.

The dispatch gives an account of a conversation with Mr. Adams, at the close of which Lord Russell said that it was his belief "that if all the assistance given to the Federals by British subjects and British munitions of war were weighed against similar aid given to the Confederates, the balance would be greatly in favor of the Federals."

Mr. Adams totally denied this proposition. "But above all," he said, "there is a manifest conspiracy in this country, of which the Confederate Loan is an additional proof, to produce a state of exasperation in America, and thus bring on a war with Great

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[1] For reply of Mr. Fish to this communication, see No. 86, p. 547.

Britain, with a view to aid the Confederate cause, and secure a monopoly of the trade of the Southern States, whose independence these conspirators hope to establish by these illegal and unjust measures."

Mr. Fish omits the words "of which the Confederate Loan is an additional proof," which, taken with the context, show that Mr. Adams was then speaking, not of the case of the "Alabama," but of the assistance in money and materials which he considered was improperly rendered to the Confederate States by blockade-running and the Cotton Loan.

Mr. Adams's letters of the 7th of April and 20th of May, and Lord Russell's letter of the 4th of May, 1865, are commented on in the Memorandum, Part II, and it is unnecessary for me to make any further observations on them, as Mr. Fish does not reply to those which I have already offered. Whatever may have been the purpose to require indemnification, no claim was presented or notified, and the grievances of which complaint was made were in no way identified with the "Alabama claims."

The dispatch of the 14th of February, 1866, was not communicated to Her Majesty's Government; but, on referring to the 3d volume of the Appendix to the American Case, p. 628, in which it is given, it appears to refer to the possibility of fresh negotiations in regard to a revision of the Neutrality Laws and to Lord Russell's refusal of arbitration. Both these subjects are referred to at page 625, and the dispatch accordingly concludes, after the paragraph quoted by Mr. Fish, by saying, "I think that the country would be unanimous in declining every form of negotiation that should have in view merely prospective regulations of national intercourse, so long as the justice of our existing claims for indemnity is denied by Her Majesty's Government, and those claims are refused to be made subject of friendly but impartial examination."

There can be no pretense that the claims which Lord Russell refused to submit to arbitration extended to indirect claims. The proposal arose in connection with "a claim for the destruction of the ship 'Nora' and other claims of the same kind," (see Mr. Adams's letter of the 23d of October, 1863,) and Lord Russell, in reply to it, stated that Her Majesty's Government must decline "either to make reparation and compensation *for the captures made by the 'Alabama,'* or to refer the question to any foreign State."

I have already pointed out that no importance can be attached to the claims of private citizens being spoken of by Mr. Seward as "our claims." The "claims of citizens of the United States against Great Britain for damages, &c., by means of depredations upon our commercial marine committed on the high seas by the 'Sumter,' the 'Alabama,' the 'Florida,' the 'Shenandoah,'" &c., of which a summary was annexed to the dispatch from Mr. Seward to Mr. Adams, of the 27th of August, 1866, communicated to Lord Stanley, and which are undeniably private claims, are mentioned in that dispatch as "the claims upon which we insist," and "our claims."

The next dispatch referred to, that from Mr. Seward to Mr. Adams, of the 2d of May, was likewise not communicated to Her Majesty's Government. The context clearly shows that the "injuries" from "the first unfriendly or wrongful proceeding" referred to the "concession of belligerency." Mr. Seward, in a preceding paragraph, says, "I feel quite certain that the balance of faults has been on the side of Great Britain. First, the concession of belligerency ought not to have been made; second, upon our earnest appeals it ought to have been earlier rescinded." The dispatch goes on to state the conviction of the American people that the "proceedings of the British Government in recognizing the Confederacy were not merely unfriendly and ungenerous, but entirely unjust."

In another part of Mr. Fish's dispatch complaints (not claims) are noticed as having been made by Mr. Adams on the 30th of December, 1862, 14th and 27th of March, 1863, and 28th of April.

The "acts" complained of in the first extract will be seen, on reading the entire passage, to have been that "vessels owned by British subjects have been and are yet in the constant practice of departing from British ports laden with contraband of war and many other commodities, with the intent to break the blockade and to procrastinate the war."

The dispatch of the 14th of March, 1863, refers to certain intercepted correspondence relating to the proceedings and supposed intentions of Confederate agents, blockade-runners, and to the Cotton Loan.

The complaint on the 27th of March, as I have already explained, also referred to the Cotton Loan and to these proceedings of Confederate agents.

The dispatch of the 28th of April begins, "I am instructed to inform your Lordship that the Government of the United States has heard with surprise and regret of the negotiation of a loan in this city," and proceeds to state that "this transaction must bring to an end all concessions, of whatever form, that may have been heretofore made for mitigating or alleviating the rigors of the blockade in regard to the shipment of cotton;" and concludes, "I am sure that it is with the greatest reluctance it" [the United States Government] "finds itself compelled, by the offensive acts of apparently irresponsible parties, bent upon carrying on hostilities under the shelter of neutrality, to restrict rather than to expand the avenues of legitimate trade. 'The *responsibility for this*' [*i. e.*, for this restriction] 'must rest mainly upon those who, for motives best known to themselves, have labored and continue to labor so strenuously and effectually to furnish the means for the protraction of the struggle.'"

I have reviewed the passages cited by Mr. Fish in support of his argument, that the "Alabama claims" included other claims than those for the actual losses of American citizens, in order to show how little support they afford to it; but this is almost superfluous, as a conclusive answer is afforded by the very volume of dispatches from which Mr. Fish has taken these extracts.

Mr. Reverdy Johnson, in a dispatch to Mr. Seward dated February 17, 1869, (page 767,) containing a report of his negotiations with Her Majesty's Government, states:

"I hear that in some quarters objections are made to the Claims Convention, for which I was not prepared.

"1. It is said, I am told, that the claims to be submitted should not be all that have arisen subsequent to July, 1853.

"2. That no provision is made for the submission of any losses which our Government, as such, may have sustained by the recognition of the insurgents as belligerents, and the depredations upon our commerce by the 'Alabama' and other vessels. * * *

"As regards the second objection," he urges, "I am at a loss to imagine what would be the measure of the damage which it supposes our Government should be indemnified for. How is it to be ascertained? By what rule is it to be measured? A nation's honor can have no compensation in money, and the depredations of the 'Alabama' were of property in which our nation had no direct pecuniary interest. If it be said that those depredations prevented the sending forth of other commercial enterprises, the answer is twofold: first, that if they had been sent forth, the nation would have had no direct interest in them; and, second, that it could not be known that any such would have been undertaken. Upon what ground, therefore, could the nation demand compensation in money on either account? And if it was received, is it to go into the Treasury for the use of the Government, or to be distributed among those who may have engaged in such enterprises, and how many of them are there, and how are they to be ascertained? France recognized the insurgents as belligerents, and this may have tended to prolong the war. This, too, it may be said, was a violation of her duty, and affected our honor. If we can claim indemnity for our nation for such a recognition by England, we can equally claim it of France. And who has suggested such a claim as that?

"But the final and conclusive answer to these objections is this:

"1. That at no time during the war, whether while the 'Alabama' and her sister ships were engaged in giving our marine to the flames, or since, no branch of the Government proposed to hold Her Majesty's Government responsible, except to the value of the property destroyed, and that which would have resulted from the completion of the voyages in which they were engaged. The Government never exacted anything on its own account. It acted only as the guardian and protector of its own citizens, and therefore only required that this Government should pay their losses, or agree to submit the question of its liability to friendly arbitrament. To demand more now, and particularly to make a demand to which no limit can well be assigned, would be an entire departure from our previous course, and would, I am sure, not be listened to by this Government, or countenanced by other nations. We have obtained by the Convention in question all that we have ever asked; and with perfect opportunity of knowing what the sentiment of this Government and people is, I am satisfied that nothing more can be accomplished. And I am equally satisfied that if the Convention goes into operation, every dollar due on what are known as the 'Alabama claims' will be recovered."

If Mr. Johnson was mistaken in the view thus decidedly expressed, it might be expected that some notice would have been taken of so important an error. But Mr. Seward's reply of March 3, 1869, gives no intimation of any dissent whatever. He writes, "Your dispatch No. 112 of the 17th ultimo, relative to the Protocol and Convention recently signed by you on behalf of this Government, has this day been received and submitted to the President. He directs me to to say, in reply, that it is regarded as an able and elaborate paper, and would have been communicated to the Senate had it not reached here at the close of the present session, and that of his Administration."

Thus, according to an uncontradicted statement in an official dispatch from the United States Minister in London to the Government at Washington, officially published by the United States Government, that Government had never exacted anything on its own account," and the claims, "*known as the 'Alabama claims'*" had been limited during the whole war, and in the subsequent negotiations up to February, 1869, to the claims for the value of the property destroyed, and that which would have resulted from the completion of the voyages in which the captured vessels were engaged.

Mr. Johnson confirmed the statement in his dispatch, in a letter to Mr. J. A. Parker, published in the "New York Journal of Commerce," 30th November, 1870: "My instructions, as did those of Mr. Adams, looked exclusively to the adjustment of individual claims, and no alleged commission or omission of the British Government of her duty to the United States pending the war was given in any part of the correspondence between the two Governments as having any influence upon other than individual claims."

It is not easy to understand how a class of claims which had been known under one appellation for seven years could have suddenly acquired a far wider and more onerous significance.

Mr. Fish relies on Mr. Reverdy Johnson's proposed amendment of the Clarendon-Johnson Convention, on these public or national claims having been prominently before the Senate when that Convention was under advisement, (by which it is to be presumed he refers to Mr. Sumner's speech, the only part of the proceedings which was published,) on the President's Message of December, 1869, and on his dispatch to Mr. Motley of the 25th of September, 1869.

Mr. Johnson's proposal, however, was not to include national claims under the head of "Alabama claims," but to superadd them by inserting certain words after the words "agree that," in the first Article of the Convention.

Had his proposal been adopted, the Article would have stood thus: "The High Contracting Parties agree that"—here comes the insertion—"[all claims on the part of Her Majesty's Government upon the Government of the United States, and all claims of the Government of the United States upon Her Majesty's Government, and] all claims on the part of subjects of Her Britannic Majesty upon the Government of the United States, and all claims on the part of citizens of the United States upon the Government of Her Britannic Majesty, including the so-called 'Alabama claims,'" &c.

Mr. Johnson avowedly made this proposal, as Lord Clarendon informed you in his dispatch of the 22d of March, 1869, to introduce "claims to compensation on account of the recognition by the British Government of the belligerent rights of the Confederates," which the British Government might balance by "claims to compensation for damages done to British subjects by American blockades, which, if the Confederates were not belligerents, were illegally enforced against them."

Mr. Johnson's belief was that the Convention was unacceptable because it did not include national claims on account of the recognition of belligerent rights, which he purposely distinguished from the "Alabama claims," and was in no respect therefore inconsistent with his dispatch of the 17th February, limiting the meaning of that expression. The information on which he founded that belief was derived, as he reported to Mr. Fish on the 9th of April, 1869, from a private source; and his suggestion made in the same dispatch, that instructions should be given to him to endeavor to supply the omission, was not favorably entertained by the United States Government, who telegraphed in reply that "as the Treaty was then before the Senate no change was deemed advisable."

The only intimation, as I have stated, which Her Majesty's Government possessed of the propriety of making any demands for national losses having been debated or considered by the Senate, was, by the publication of Mr. Sumner's speech, in which he urged that England was liable for national injuries of the most extensive character; but these injuries were rhetorically deduced, chiefly from the Proclamation of Neutrality, and the supplies furnished through the blockade.

The effect of Mr. Sumner's speech in England was reported by Mr. Johnson to Mr. Fish on the 10th of May: "If an opinion may be formed from the public press, there is not the remotest chance that the demands contained in that speech will ever be recognized by England. The universal sentiment will be found adverse to such a recognition. It would be held, as I hear from very reliable source, to be an abandonment of the rights, and a disregard of the honor of this Government."

Her Majesty's Government never learned that Mr. Sumner's views were indorsed by the Government of the United States.

Mr. Fish next mentions his instructions to Mr. Motley, of the 25th of September. These instructions, however, were not communicated to Her Majesty's Government, and when Mr. Motley told Lord Clarendon on the 10th of June, 1869, that the Convention "was objected to because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other; and, lastly, that it settled no question, and laid down no principle," he proceeded to speak of the "risk and responsibility" incurred by a Government which conferred belligerent rights, and thus his representations naturally connected themselves with Mr. Johnson's proposal with regard to the mutual claims of the two Governments.

Mr. Fish admits that, in his dispatch of the 25th of September, he "made no claim or demand for either direct or indirect injuries."

These indirect injuries could not therefore have received the designation of "Alabama *claims*" from that dispatch.

Indeed, on examining the extracts which he gives from it with their context, it is apparent that the "vast national injuries" which he states that he presented in it are ascribed to other causes than the acts committed by the Confederate cruisers.

The first extract, beginning "The number of our ships thus directly destroyed," &c., follows a paragraph complaining of the Proclamation of Neutrality: "In virtue of the Proclamation, maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were rendered lawful, and *thus* Great Britain became, and to the end continued to be, the arsenal, the navy-yard, and the treasury of the Confederacy.

"A spectacle was *thus* presented without precedent or parallel in the history of civilized nations, Great Britain," &c.

The second extract runs thus:

"We complain that the insurrection in the Southern States, if it did not exist, was continued, and obtained its enduring vitality by means of the resources it drew from Great Britain. We complain that by reason of the imperfect discharge of its neutral duties on the part of the Queen's Government, Great Britain became the military, naval, and financial basis of insurgent warfare against the United States. We complain of the destruction of our merchant marine by British ships, manned by British seamen, armed with British guns, dispatched from British dock-yards, sheltered and harbored in British ports. We complain that, by reason of the policy and acts of the Queen's Ministers, injury incalculable was inflicted on the United States."

The third extract, respecting the vast national injuries, is followed in the dispatch by a passage explaining the various causes of injury, which Mr. Fish has omitted to notice: "Nor does he attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel cruisers, or by the supply of ships, arms, and munitions of war to the Confederates, or otherwise, in whatsoever manner."

Lord Clarendon's memorandum of observations on Mr. Fish's dispatch, like the dispatch itself, touched on various topics beside that of the Confederate cruisers, and Her Majesty's Government cannot admit that, because Mr. Motley read a dispatch to Lord Clarendon on the 12th of January, 1870, stating that Mr. Fish had not included it "among the papers respecting the 'Alabama claims,'" therefore all the subjects mentioned in it were "Alabama claims."

Still less can they admit that because Mr. Bernard, in the 14th chapter of his work, gave certain extracts from Mr. Fish's dispatch, under the head of "Alabama claims," that dispatch became the standard by which the claims known as the "Alabama claims" was to be measured. It happens moreover that, in the extracts given by Mr. Bernard in the chapter to which Mr. Fish refers, the three passages cited by Mr. Fish in his present dispatch as relating to indirect injuries and national losses are omitted.

It only remains to notice the President's Message of December, 1869. This Message does not mention the "Alabama claims," but speaks of the "injuries resulting to the United States by reason of the course adopted by Great Britain during our late Civil War."

I have thus been able to show, upon the testimony of Mr. Reverdy Johnson, the American Minister, corroborated on examination by the extracts cited by Mr. Fish, that for the first seven years of the discussion up to 1869, none but direct claims were "known as 'Alabama claims;'" and that in the only authoritative document in which national indirect injuries were mentioned, up to the time of the recent negotiation, they were not described as "Alabama claims," or as claims of any description.

Mr. Fish states that "continental jurists and publicists discussed the national claims on account of the prolongation of the war under the head of 'réclamations,' having 'qu'un rapport *indirect*, et nullement un rapport *direct* avec les déprédations réellement commises par les croiseurs.'"

The quotation appears to be taken from a pamphlet by Dr. Blüntschli, entitled "Opinion impartiale sur la question de 'l'Alabama' et sur la maniére de la résoudre." In this pamphlet Dr. Blüntschli reviews the various points mentioned by Mr. Sumner in his speech in the Senate on the 13th of February, 1869, including the recognition of belligerency. In the sixth section he discusses the effects attributed by Mr. Sumner to the acts of the "Alabama" and other vessels, and states that all the effects are attributable, in the first place, to the cruisers themselves, and not to the British Government. "Sa faute ne consiste pas à avoir équipé et appareillé les corsaires, mais *à n'avoir pas empêché* leur armement et leur sortie de son territoire neutre. Mais cette *faute*[1] n'a qu'un rapport *indirect* et nullement un rapport *direct* avec les déprédations réellement commises par les croiseurs."[2] Dr. Blüntschli's remark did not, therefore, relate to claims for indirect losses, nor does the word "réclamations" occur in the sentence, in the paragraph, or in the whole section from which the quotation is taken. All that he says is that the default on the part of Great Britain, by which the cruisers escaped, has but an indirect, and in no way a direct, connection with the depredations actually committed by them.

Mr. Fish gives as a reason for no claims for national losses having been "defined" or formulated, that Lord Russell objected, in July, 1863, to any claims being put forward. As Mr. Adams continued to present claims for the destruction of property by the "Alabama" in August, September, and October of that year, and numbers of similar direct claims have since been presented, Her Majesty's Government are unable to see the force of this argument.

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[1] The italics are Dr. Blüntschli's.

[2] "Revue de Droit International et de Législation comparée," 1870, pp. 473–4.

Whatever may have been the reason, the fact remains, that up to the time of the arrival of the British High Commissioners at Washington, the term "Alabama claims" had a recognized and well-known meaning as direct claims, and that no other claims had been presented to the British Government. Nor, indeed, were these other claims even then presented.

The American High Commissioners, as appears by the 36th Protocol, stated that the history of the "Alabama," and other cruisers, showed extensive direct losses, and indirect injury, and that Great Britain had become justly liable *for the acts* of those cruisers and their tenders; that *the claims* for the loss and destruction of private property, which had thus far been presented, amounted to about 14,000,000 dollars, and "that in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account, in the event of no such settlement being made."

The "indirect losses" were thus mentioned, not as *claims*, but as grievances, and were mentioned only to be withdrawn from discussion.

Mr. Fish says that it is unfortunate that the British High Commissioners did not remonstrate against the presentation of these claims, and "from the first to the last took no exception, and recorded no objection, to the presentation made by the American Commissioners of the claims *generically* known as the 'Alabama claims,' which stand on the Protocol as a 'genus,' or class of claims comprehending several species, and among them enumerating specifically the claims for indirect losses and injuries."

The answer to this is, that no mention is made in the Protocol of "claims generically known as the 'Alabama claims,'" or of any specific enumeration of them, or of any such presentation at all. All that occurred was the above-mentioned statement that the history of the "Alabama" and other cruisers showed indirect injuries, followed by the waiver of the indemnification on their account, in the hope of an amicable settlement.

The British High Commissioners thereupon took the natural course of not "entering upon a lengthened controversy" upon the barren question of injuries for which they believed no claim was presented, and these indirect losses and injuries were never, as you are aware, again brought forward by the American High Commissioners, nor did they re-appear until they were revived in the case presented by the United States Agent at Geneva, on the 15th of December.

Mr. Fish could not have been ignorant, from the report to which I have already referred, which he had received from Mr. Johnson, and from the discussions in the public press, of the feeling in England with regard to the exaggerated pretensions in Mr. Sumner's speech; and when he intended to introduce as "Alabama claims" similar claims of equally onerous character, it is much to be regretted that he and his colleagues did not explain more clearly that by "an amicable settlement" they meant one particular form of settlement, and that if the British High Commissioners did not acquiesce in it, they would bring forward the constructive claims, for which an enormous indemnity might be held due.

Instead of this, the American High Commissioners made a statement which was accepted by the British High Commissioners and read by Her Majesty's Government, and, as far as they are aware, by the press and public of both countries, in a sense which, it is now stated, the American High Commissioners never intended it to bear, but which, until the interpretation appeared in the American Case, seemed the only sense in which it could be read.

Her Majesty's Government cannot accept the view which Mr. Fish appears to entertain that a negotiation must necessarily be a matter of bargain, in which a concession on one side is to be set off in each instance against a concession on the other. The waiver of the constructive claims was, as I stated to General Schenck, a requisite preliminary to the negotiation, because Her Majesty's Government could not (as the Government of the United States must have been aware then, and must have since become convinced) have assented to any mode of settlement which comprised these constructive claims, upon which the opinion of this country had already been pronounced so strongly when they were raised by Mr. Sumner.

Mr. Fish asks, "How could it happen that so important a feature of the negotiation as this alleged waiver is now represented to be was left to inference, or to argument from intentions never expressed to the Commissioners or the Government of the United States until after the treaty was signed?

"The amplitude and the comprehensive force of the Ist Article (or the granting clause) of the Treaty did not escape the critical attention of Her Majesty's Commissioners; but was any effort made to limit or reduce the scope of the submission, or to exclude the indirect claims?"

The answer to this is that, in the first place, the British High Commissioners believed that after the waiver they were agreed with the United States High Commissioners upon the basis of the terms of the submission; and, in the second place, that they did limit the scope of the submission.

The British High Commissioners, in the information which they have furnished to Her Majesty's Government, both during the negotiation and since the presentation of the American Case, have uniformly maintained that the claims for indirect losses were not included, nor intended by them to be included, in the terms of the submission to arbitration, and you are aware that the British High Commissioners objected to the adoption of a form of reference to the Arbitrators, which might from its vagueness be taken to permit the introduction of such claims, and that it was not until after lengthened discussion in the Commission that the terms of reference as they now stand in the Treaty were settled.

Her Majesty's Government cannot acknowledge that the nature of the claims submitted was left to inference. On the contrary, the precise claims referred to arbitration were closely defined and limited.

Mr. Fish writes as though the reference to arbitration comprised "differences" and "complaints," and "all claims;" but the British High Commissioners especially guarded against this. The claims submitted must be both "claims growing out of the acts committed by the aforesaid vessels," *i. e.*, "Alabama" and other cruisers, *and* claims "generically known as the 'Alabama claims.'"

The use of the words "acts committed" admittedly excludes the questions of blockade-running and concession of belligerent rights from the arbitration, and the specification of the claims as "claims generically known as the 'Alabama claims'" limits them to the class of direct claims; which it has, I trust, been abundantly shown were alone known at the time as "Alabama claims."

Mr. Fish attaches some importance in support of his views to the words "growing out of" and "generically," but the first phrase is taken from Mr. Adams's letter of the 31st of October, 1863, when, in forwarding "a number of memorials and other papers connected with the depredations of the vessel formerly called the "Oreto," and now the "Florida," he observed that "the conclusion to which it would seem that both Governments arrive in regard to the disposition to be made of the claims growing out of the depredations of the 'Alabama' and other vessels issuing from British ports appears to render further discussion of the merits of the question unnecessary." No mention whatever of indirect or constructive claims had been made at this time, and the claims to which Mr. Adams referred are manifestly the claims for actual damages.

When the same expression is used again it must be taken to have the same meaning.

I will not follow Mr. Fish into the etymology of the word "generically." "Generically known as the 'Alabama claims'" seems to be the same as the "class of claims known as the 'Alabama claims,'" the phrase used in the Stanley-Johnson Convention, and serves to distinguish this class of claims from every other class of claims which the United States Government might have to prefer. The "Alabama claims" have been designated as a "class of claims" to avoid the misapprehension, which at one time seemed to have occurred to Mr. Seward, that the words "Alabama claims" might be construed as meaning only claims on account of injuries sustained from the one vessel "Alabama." The phrase itself goes very far to define its own limited meaning; for, while it is quite intelligible that, for brevity's sake, the name of one vessel should stand for others of a particular class, of which it is the principal example, it appears to be contrary to all reason that the name of such a particular ship should be used to describe claims for general national losses, such as those for the decline of the commercial marine of the United States and the prolongation of the war.

Mr. Fish, with reference to the remark in his dispatch of the 27th of February, that the indirect claims are covered by one of the alternatives of the Treaty, states that the Government of the United States are "of the opinion that they are covered by the alternative power given to the Tribunal of Arbitration of awarding a sum in gross, in case it finds that Great Britain has failed to fulfill any duty, or of remitting to a Board of Assessors the determination of the validity of claims presented to them, and the amounts to be paid."

The VIth Article of the Treaty, after stating the three Rules, proceeds: "Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing Rules as a statement of principles of international law which were in force *at the time when the claims mentioned in Article I* arose; but that Her Majesty's Government . . . . agrees that in deciding the questions between the two countries arising out of *those claims*, the Arbitrators should assume," &c.

Article VII provides that "the said Tribunal *shall first determine as to each vessel separately* whether Great Britain has, by any act or omission, failed to fulfill any of the duties set forth in the three foregoing Rules, or recognized by the principles of international law not inconsistent with such Rules, *and shall certify such fact as to each of the* *said vessels.* In case the Tribunal find that Great Britain has *failed to fulfill any duty or duties as aforesaid,* it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain *for all the claims referred to it.*"

All the claims must mean all the "claims mentioned in Article I."

Mr. Fish admits that the indirect losses are not covered by what he terms the other "alternative" of the Treaty, viz, the provision in Article X, that "in case the Tribunal finds that Great Britain has failed to fulfill any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the Arbitrators."

Mr. W. Beach Lawrence, the distinguished American publicist, in a letter dated the 20th ultimo, and published in the Springfield Independent, observes: "As in each case determined against Great Britain, the Board of Assessors are, by Article X, to ascertain and determine the amount which shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators, there would seem to be no room for indirect damages. Besides the difficulty of deciding on a claim indeterminable in its nature, there would be the further embarrassment of apportioning the amount of injury growing out of the acts of each vessel in the general account. Is it possible that the Assessors are to decide what part of the prolongation of the war is to be assigned to each vessel? I am aware that there is a provision that the Arbitrators may, after they have decided as to each vessel separately, award a sum in gross for all the claims referred to them. I cannot, however, perceive how that provision in any wise extends the scope of the power of the Tribunal." Her Majesty's Government cannot perceive it either.

By both Articles VII and X, the Arbitrators are to determine the extent of the liability of Great Britain as to each vessel, *i. e.*, as to each cruiser separately. Throughout, the claims are strictly connected with the acts of the cruisers. Mr. Fish acknowledges that, if the claims are considered in detail, the indirect losses cannot be taken into account; and yet, as he states, they have been "presented at Geneva, not as claims for which a specific demand was made, but as losses and injuries consequent upon the acts complained of, and necessarily to be taken into equitable consideration on a final settlement and adjudication of all the differences submitted to the Tribunal."

I have already pointed out that "claims" and not "differences" have been submitted; and Mr. Fish's contention would amount to this, that, in awarding damages for a specific want of due diligence in regard to a particular vessel, the Arbitrators should take into consideration a variety of grievances not necessarily connected with that vessel, and which could not be made matters for a claim if examined in detail, and award a gross sum not proportioned to the want of diligence or to the injury thereby occasioned, but swelled by the amount of all the injuries and losses of which the United States may have complained in all the correspondence of which the history of the cruisers forms part.

That is to say, that the Arbitrators should give judgment in one matter and inflict a penalty for another matter. A principle so contrary to the ordinary practice of jurisprudence could not have been presumed by the British High Commissioners, or by Her Majesty's Government, to have been intended to be introduced, unless the intention was explained to them; but, from first to last, no mention of indirect losses was made in connection with the payment of a gross sum.

If the American High Commissioners desired that the alternative of the award of a gross sum should cover the claims for indirect losses, why were they not more explicit? and why did they not require some provision to be made in the Treaty to explain this for the guidance of the Arbitrators?

Mr. Fish says that "the claims for indirect losses were presented to the British Commissioners as solemnly and *with more definiteness of specification* than were presented by them to the American Commissioners the claims for alleged injuries which the people of Canada were said to have suffered from what was known as the Fenian raids."

But the indirect losses were never "presented" as "claims," and are even now said not to be "presented as claims" for which a specific demand is made; while the Fenian raid "claims" were proposed for consideration on the 4th of March; again "brought before" the High Commission on the 26th of April, when the British negotiators said that "they were instructed to present these claims," and it was not until the 3d of May that they said that "they would not urge further that the settlement of these claims should be included in the present Treaty. And that they had the less difficulty in doing so, as a portion of the claims were of a constructive and inferential character."

Thus while the American indirect losses were only mentioned once, and then as it were incidentally, the Fenian raid claims were repeatedly and formally presented, and when their withdrawal from the negotiation was agreed to at its close, it was with a remark which could have had no just bearing, had not it been believed that all constructive and consequential claims had been withdrawn and excluded on the American side also.

Mr. Fish expresses doubts as to the points raised in my letter of the 20th of March, that the Washington Claims Commissioners have, and the Arbitrators have not, power to decide upon the extent of their own jurisdiction, and that no words similar to those conferring that power are to be found in the articles relating to the Geneva Arbitration.

It will be seen, on comparing the Treaty of Washington with the Claims Convention between Great Britain and the United States of the 8th of February, 1853, that the words which I had quoted from the XIVth Article of the former are identical with the words used in the IIId Article of the latter, under which the Claims Commissioners were empowered to give, and did undoubtedly give, decisions as to the extent of their jurisdiction; as for instance, in the claims for Texas bonds of James Holford's executors, and Philip Dawson, and for Florida bonds of Heneage W. Dering, and in other cases. (See Senate Executive Documents, No. 103, 34th Congress, 1st session, pp. 63, 64.)

The Articles engaging to consider the results of the proceedings of the Tribunal, and of the Claims Commission, respectively, as final settlements, Articles XI and XVII, ar also adopted from the Convention of 1853, Article V; and had it been desired to give the same powers of jurisdiction to the Arbitrators as to the Commissioners, a clause similar to that in the XIVth Article would have been inserted to express it.

In the absence of such a clause the jurisdiction of the Arbitrators remains restricted to the particular claims "known as Alabama claims," submitted to them in Article I.

Her Majesty's Government cannot admit that a power which, when it is designed to be given to the Claims Commissioners in one part of the Treaty is given in express words, can be inferentially assumed to be given in another part of the Treaty to the Arbitrators, by assigning a broad signification to the term "question" in the IId Article.

The questions which the Arbitrators are to examine and decide are obviously all questions that may be laid before them by the respective Governments, in preferring and refuting the particular claims on which their judgment is requested, and the Article must be read in connection with the succeeding Articles III, IV, and V, providing how the Cases, Counter Cases, evidence, and arguments are to be brought before them.

Mr. Fish cannot mean that the Arbitrators may decide "any questions" not coming within the terms of the reference to the Tribunal. If that were to be the case, Her Majesty's Government might bring forward as a set-off against the "Alabama claims" the questions of the injury done to British trade by the blockade, or the Fenian raids, or possibly other questions. In short, a scope would be given to the Arbitration which the United States Government could not have contemplated, and would probably be unwilling to admit.

Mr. Fish states that "the United States calmly submitted to the Commission the decision of its jurisdiction" over the Cotton Loan Claims; but this statement does not appear to be at all borne out by the "Argument for the United States on motion to dismiss" these claims.

The United States Agent moved for the dismissal of the claim, as not being included under the Treaty, and plainly notified that the United States refused to permit it to be considered as included; his argument being that there was a constitutional provision which prevented the payment of such claims, that this was known to the American Commissioners when negotiating the treaty, to the American Government when accepting it, and to the Senate when ratifying it, and that it was impossible for the United States to pay or to consider the question of paying the claims.

"It must be borne in mind," he said, "that at the time of this correspondence, as well as at the time of the conclusion and ratification of the Treaty, the Constitution of the United States contained an express prohibition of the assumption or payment of these debts by the United States, or by any State. That every officer of the United States. executive, legislative, and judicial, was thus bound by the supreme law of the land and by his oath of office to treat as utterly null any provision of any Treaty or statute in contravention of that constitutional prohibition, under penalty of impeachment or its equivalent."

The Agent concluded by asking "the dismission of the claim on the ground specified in his motion."

In short, he positively declared that no award unfavorable to the United States would, or could, have been accepted and paid.

There are several other statements made by Mr. Fish which are open to reply, but I have considered it sufficient, for the purposes of this dispatch, to confine my comments to those which bear more immediately on the negotiation and interpretation of the Treaty.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 9, (1872,) p. 18.]

No. 48.

Sir E. Thornton to Earl Granville.[1]

[Extract.]

WASHINGTON, *May* 13, 1872. (Received May 26.)

I paid a visit to Mr. Fish at the State Department on the 9th instant, when he read me a number of telegrams which had recently passed between himself and General Schenck relative to conversations which your Lordship had held with the latter on the subject of the indirect claims.

Mr. Fish appeared to think that not only did Her Majesty's Government declare that the right to present claims for indirect damages was not granted by the Treaty, but that it further wished to compel the United States to recognize and admit that it was so. Mr. Fish added, that as his Government had always, and in the most formal manner, declared and argued the contrary, it would be a humiliation to which the United States could not submit, now to confess that the presentation of the indirect claims by the United States Government was made in spite of its knowledge that those claims were not comprised in the Treaty. I declared to Mr. Fish that I was convinced that, however satisfied I was that Her Majesty's Government maintained its own opinion on the subject, I did not imagine that it had any wish to force the United States Government to hold or declare the same opinion.

But Mr. Fish expressed his opinion that there was now little chance of the Treaty being carried out; and he did not hesitate to ground it upon his belief that Her Majesty's Government had no desire for its continuance. It is needless to trouble your Lordship with all the arguments which I used to combat this opinion.

I thought it expedient to send your Lordship a short telegram on the subject, and on the receipt of your satisfactory answer[2] on the following day showed it to Mr. Fish, who seemed much relieved by its contents, and still more gratified when I informed him that your Lordship had communicated to General Schenck a Draft Treaty Article such as Her Majesty's Government could accept.

I had the honor to receive a copy of that article during the night of the 10th instant. Not knowing whether Mr. Fish had also received it, I wrote to him early in the morning of the 11th instant, informing him that I had received the document in question, and that if it had not reached him I should be glad to show it him. He at once came to my house, said that he had also received a copy, and upon my asking him what he thought of it, he answered that it had struck him favorably.

I did not see Mr. Fish again till yesterday afternoon, when he told me that he had submitted the Article to the President, who was likewise favorably impressed with its contents, and had decided that it should be communicated to the Senate for its consideration and advice. Mr. Fish added, that he had telegraphed to that effect to General Schenck on the afternoon of the 11th instant.

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[1] The substance of this dispatch was received by telegraph on the 10th of May.

[2] Lord Granville had informed General Schenck that Mr. Fish was under a complete mistake. We desire to maintain the Treaty; we do not desire to force the United States to acknowledge that the indirect claims do not by the Treaty come under the jurisdiction of the arbitration. But we decline to assent to any contrary understanding on our part.

Mr. Fish stated that it would be submitted to-day to the Senate, and with it copies of the four notes which had passed between your Lordship and General Schenck on the subject of the indirect claims, and of some recent telegrams between the latter and Mr. Fish.

I told Mr. Fish that, in my opinion, the wording of the Draft Article was very clear, and, as far as I could judge, was in exact accordance with the views which he had recently expressed to me in his conversations upon the subject; I therefore ventured to entertain a hope that, if it were acceptable, it would be accepted as it stood. Mr. Fish said that he did not himself see anything that need be changed in the substance of the Draft Article, though one or two Senators were of opinion that some of the words might be changed so as to render the meaning more clear with reference to the principle which it was intended to lay down. But he thought that this might arise from the difference of interpretation which was sometimes given in the two countries to the same words.

No. 49.

General Schenck to Mr. Fish.

[Extract.]

No 225.] LEGATION OF THE UNITED STATES,
London, May 14, 1872. (Received May 27.)

SIR: Since my No. 216 on the 2d instant, our correspondence by telegraph has been so constant and full, that I must refer to that mainly for a connected history of what has transpired.

It would be vain to attempt to give anything like a detailed account of what passed or was said in the almost daily interviews and conversations, and sometimes much oftener than daily, and often lasting for hours at a time, which took place between Lord Granville and me. I sought, as my telegrams will show, to keep you continually, regularly, and clearly informed as to results, and with my last dispatch (No. 224) I furnished you copies of all the notes and written matter which came to me with the new Treaty Article proposed by this Government.

Perhaps, however, I cannot better report or explain to you the manner and spirit with which I sought to present and urge the views of our Government in this contention about the presentation of the claims for indirect damages, than by forwarding to you the annexed copy of a paper which I read to Lord Granville on the morning of the 10th instant.

By referring to my several telegrams of the 9th, you will observe that at the end of that day, it seemed as if all hope of agreement between the two Governments must be given up. Her Majesty's Government had expressed their decision against the suggestion of a new Article as a mode of settlement, and I had informed them that no note could be accepted by the President and assented to which did not embody the conditions expressed in your telegram of the 27th of April.

But early next morning came the message from Lord Granville asking me to telegraph you immediately that a Cabinet would be held that day, and that he wished me to meet him afterwards. * *

I did not wait for the conclusion of the Cabinet meeting, but sought Lord Granville almost immediately at the Foreign Office. I had made up my mind to present once more to His Lordship, as briefly and yet as clearly as I could, a summary statement of the views of my Government, and the position, as I understood it, of the question between us. I had to this end very hastily prepared myself by reducing what I had to say to him to writing, in order that there might be no misunderstanding afterward of the points advanced, or of my language. This was the paper of which I send you a copy. Lord Granville came out of Cabinet to meet me. I read it to him, and placed as much of it as was copied in his hands. I afterward furnished him a full copy. He replied at once verbally by informing me that Her Majesty's Government would probably conclude to take the initiative and propose a Treaty Article, in which case the proposal in such form as it might be agreed to offer it, would be communicated to me after the Cabinet had decided; and afterward, on that day, the proposed article was delivered to me. If my summing up that morning did not contribute towards bringing this conclusion to the correspondence and discussion, at least it did not prevent this Government from concurring in what I regarded as the only effective form of adjustment which appeared to remain to us.

It is not for me to comment now on the merits of this plan of adjustment which has been placed before the Senate for consideration. Before this dispatch can reach you, that body will probably have advised the President to accede to it, or will have refused its assent. I sincerely trust that the former will be the decision arrived at. This I venture to say, not from a desire merely to adopt what seems to be perhaps the only remaining chance of preserving a Treaty so important to the peace and interests of the two countries, but because I think the principle declared in this Article for future observance between the two nations is one which if settled and maintained must be of inestimable advantage to the United States. With our chances of being generally neutral when Great Britain and other European States are belligerent, the benefits of the rule are to be principally and oftenest ours. Our continental position, our extended sea-coast, our numerous ports, the enterprising character of our citizens, and the difficulty of restraining their spirit of adventure, surely make the rule that would thus be established more valuable and more favorable to the United States than to perhaps any other country.

All this we secure in exchange for the surrender of certain claims which we were pressing before the Arbitrators at Geneva, not with a view to pecuniary compensation, but only because they were a portion of the grounds of disagreement between us and Great Britain, upon which that Tribunal was empowered, for the sake of perfect peace, to make an award, while we ourselves did not hesitate to admit that it must be to our gain to have the decision against us. * * *

I have the honor to be, sir, your obedient servant,

ROBT. C. SCHENCK.

[Inclosure in No. 49.]

Summary of views of the United States on the indirect claims read by General Schenck to Earl Granville on May 10, 1872.

General Schenck, in an interview with Lord Granville, summed up what he regarded as the present position of the question between the two Governments in the following remarks, which he had reduced to writing to prevent misunderstanding of his views or language:

When we parted, after our long conversation yesterday, your last words to me were these: "I carefully avoid anything that may be construed into menace, but in consequence of the views and information you have presented to me yesterday and to-day I take an unfavorable view of the chances of settlement." Those words I felt it my duty to telegraph last night, as I told you I would, to my Government, and I added to them, "I told Lord Granville that I was of the same mind."

It was painful to me beyond expression to have to do this—a grave thing to have to believe that the result of all the labor and care which led to the making of the Treaty of Washington—the end of all the hopes which it had inspired for the future of our two countries, and for the cause of civilization and the nations—was to be but failure, disappointment, and estrangement, instead of success, close and lasting friendship, and peace. I have not slept well on that conclusion to our interview.

If this be the end, then I am well aware that each Government will, in one form or another, present its explanation to the world, all the States and peoples of which, it is no exaggeration to say, are waiting the issue of our attempts to come to a good understanding; and each party will naturally seek to justify itself and to throw the blame on the other.

This must be my excuse, at the risk of too much repetition, for one more effort, which must now, in this pressure of time, be hastily and imperfectly made, to present the views and position of my Government in relation to the points on which we so unfortunately differ.

The difficulty has its root entirely in the opposing interpretations given to the Treaty by the two Governments.

The United States understand that it was the intention of that instrument to provide a mode for the settlement, wiping away, and blotting out forever of all claims against Great Britain growing out of the acts of the Alabama and other such cruisers; and they claim therefore to put forward, and have put forward, in their Case before the Arbitrators, the whole of their demands for damages, direct and indirect. This they insist they may rightfully do; and that they are entitled to ask and expect of the Arbitrators a decision as to each class of claims, as to its admissibility before the Tribunal for consideration in the first instance, and if adjudged admissible, then such award as that High International Court constituted by the Treaty may think it just within the scope of their powers to make. But the United States have not desired or expected any award of compensation from Great Britain for the indirect damages. They have even been free to admit in advance that it would be better for their future advantage and the interest of nations generally that the judgment of the Arbitrators should be adverse to that class of claims. What they contend for is the right under the Treaty to submit them for consideration, as a known part of their demands against Great Britain; and that it is important to both countries and in the interest of peace and good feeling that every question in regard to such claims should be solemnly considered and passed upon, so that they may disappear forever.

Great Britain maintains that it is not within the meaning and intention of the Treaty that such claims should be placed before the Tribunal, or that they come within the province of the Arbitrators to consider and decide upon.

The long argumentative discussion of this point has ended unfortunately in neither party being able to convince the other of the soundness of its interpretation.

Each is bound to admit good faith and fair intention in the other.

Both nations desire mutual and cordial friendship.

Both are earnestly and sincerely desirous to maintain the Treaty.

Some other way out of the difficulty, therefore, must be found if these objects are to be attained.

Anticipating this irreconcilable disagreement on the point of interpretation, various expedients were suggested as probable means for escape from the dilemma, even before the conclusion of the discussion had been reached; but none of these suggestions were adopted or acted on, and it is now unnecessary to revive or refer to them.

At the last, in consequence of a conversation between himself and the British Minister at Washington, Mr. Fish was led to believe that Her Majesty's Government might make a proposal to the effect that they would engage that in the future, should Great Britain be a belligerent and the United States neutral, and should there be any failure on the part of the United States to observe their neutral obligations, Great Britain will make or advance no claims against the United States by reason or on account of any indirect, remote, or consequential results of such failure, and that, in consideration of such stipulation, the United States shall not press for a pecuniary award of damages before the Geneva Tribunal on account of the claims, respecting which Great Britain has expressed the opinion that they are not included in the submission, viz, the transfer of the American shipping, increased insurance, and the prolongation of the war. If such a proposal should be made by the British Government they were informed that the President would assent to it. But it was to be understood that there was no withdrawal of any part of the Case of the United States, but an agreement not to demand damages on account of those particular claims, leaving the Tribunal to make such expression of opinion as it might think proper on that question. A communication to this effect was made to the British Government, and a form of a note was given me containing in some sort a proposal of this kind to be submitted to my Government, but it was found to be in so many essential particulars different from the suggestion which was understood to have been made by Sir Edward Thornton, and which had commended itself to Mr. Fish, that it was not assented to by the President. A modification of this note was subsequently made, and it was submitted in an amended form.

The modified note omitted or changed some portion of what was objectionable in the first proposal, but was still so far short of what is consistent with the views and position of the United States that it could not be accepted.

The grounds of objection to the proposal as framed and presented by this note I will hereafter state.

There was then a suggestion made to Her Majesty's Government that their proposal might be submitted in the shape of a new article to be added to the Treaty of Washington. This would effectually bind both nations for the future to the observance of the rule which they might agree on, and would remove, if properly and carefully framed, all objections made to an interchange of notes as a secure and effective mode of reaching the object in view.

But Her Majesty's Government, it is understood, altogether decline, or have thus far declined, to open any negotiation to define by treaty the extent or limit of the responsibility of a neutral to a belligerent for indirect or consequential damages. I deeply regret this, and my Government regrets it; and I will proceed to explain presently wherein it is thought a treaty stipulation has an advantage over any other form of agreement, and ought to be desired by both parties.

But to return to the difficulty—nay, the impossibility—of adjusting the disagreement by an interchange of notes, if we must adopt the form and substance of the proposal offered in that shape by the British Government. In the first place, that proposal, as Great Britain appears to be only willing to present it, either directly stipulates for, or implies, a withdrawal or abandonment on the part of the United States of the indirect claims; that is, to regard and treat them as eliminated from the case presented to the Arbitrators, and not to be in any way considered or adjudged as the subject of award by the Tribunal. The British Government holds—notwithstanding the principle that every tribunal must necessarily, by its very creation, possess an inherent right and power to decide questions relating to its own jurisdiction, considering inevitably and at the very threshold whether a matter brought before it is or is not one of which it can take cognizance—the British Government holds that the Arbitrators cannot look at the indirect claims even for the purpose of determining that they are inadmissible. This is not overstating their position, extravagant as it may seem, when they maintain that under the Treaty the United States had no right to put such claims forward in their Case. But the United States not only maintains that the mentioning and putting forward of these claims is rightful, with a view to obtaining a judgment as to their admissibility, but also hold that it was the intent and meaning of the Treaty that they should be submitted for whatever they may be worth, even if this has to be done only with a view to get rid of them as a cause of difference and complaint between the two countries.

Now, the President of the United States, acting through his Agent at Geneva, can put forward, withhold, or withdraw such portion of the claims as he may think proper. That is not denied. But if any of these claims are contemplated and intended by the Treaty itself for submission, such withholding or withdrawing of them by the President alone is not an extinguishment of them. The power of the President of the United States is limited by the Constitution. He cannot of himself make a treaty; nor can he alter, abridge, or depart from the spirit or intention of a treaty. To do that requires the assent, advice, and concurrence of the Senate. If the Treaty submits these claims, as he is of opinion it clearly does, to the consideration of the Tribunal, then his putting them into the Case, or his taking them out of the Case, does not dispose of them. If they are withdrawn by him, they are only laid away, preserved perhaps to be a future plague, unsettled; kept as a possible source of irritation and complaint. They can be extinguished only by some judgment of the prescribed Tribunal appointed for their consideration, or by being given up through the action of the whole treaty-making power exercising its constitutional functions in behalf of the nation.

Thus you should clearly see the reason why the President may be able to agree not to press for a money-award on claims which he regards as now before the Tribunal, but to leave them to be disposed of or commented on by the Arbitrators, while he refuses to withdraw them as not being properly a subject for their consideration.

There is objection, too, to the substance of the proposal made in the British note. The engagement, to be of value in the future, should be reciprocal. The note professes to make it so; but how? The offer of Her Majesty's Government is to agree that the view which they have heretofore presented of such indirect claims shall be their principle of future action and conduct; and that at any time when the United States may be a neutral, and Great Britain a belligerent, she will not advance any claims inconsistent with that principle.

This is vague; and yet it is limited and narrow.

It is a vague undertaking to promise generally to adhere to a "view" or a "principle," when there must be a search to ascertain what that view is, or principle is; and it is a narrow undertaking which confines itself to an abnegation of the right to pursue certain specific classes of damages, when the particular kinds of injury out of which those damages may arise are only to be determined by comparison. There should be general words of description, and a clear enunciation of principle, in any rule that is to serve as a law of action, instead of a reference only to special cases that have before occurred; because no two cases can ever be exactly similar. A rule depending for its application only on tests of comparison would breed disputes instead of removing them.

A treaty stipulation might be made free of all these objections.

In the first place there could be no question about its mutually binding force; and in the next place, being the joint concurrent declaration of the two parties to it, reduced to a single form of expression, it would have a precision not likely to be found in a collation or comparison of the several notes embraced in a diplomatic correspondence.

Great Britain has not merely denied the right of the United States to put forward the indirect claims because she denies that the Treaty admits of any construction which will authorize their being considered by the Tribunal. She has also taken the alternative view, that if, by reason of any ambiguity in the Treaty, or any possible interpretation of it, such claims could be brought forward by the United States, it is not to be supposed for a moment that she ever intended to agree to submit to arbitration demands upon her of such character and nature that they might be dangerous to the very existence of any nation, and make the condition of a neutral possibly worse than that of a belligerent.

To insist that the Treaty is so clear in its terms as in no sense to admit of the American interpretation, is only going back to and begging the question which has been fruitlessly discussed. But if it be so clear in the meaning, then Great Britain, by such a treaty stipulation, yielding nothing, giving no consideration, would secure immunity for the future against a class of claims which she asserts to be always dangerous and improper to be made.

But, on the other hand, if the Treaty does admit of the American interpretation, Great Britain would obtain that immunity for the future not only without cost or sacrifice, but with the additional advantage of escaping from an obligation into which, she avers, in that case, she was unwittingly drawn, and which she regards as so dangerous that, if it does exist, she would rather repudiate a solemn treaty than abide by what she has done.

What, then, is it that Great Britain will gain if a new article prescribing a rule against claims for indirect damages be added to the Treaty? She will have the Treaty with all its benefits to her, as it now stands, remain intact. She will be relieved from the responsibility on the one hand of answering to any award against her which may be made by the Arbitrators in case the American interpretation is sustained, and on the other from the deplorable alternative of abrogating her own solemn act. And she will obtain formal and certain security for the future that she is never to be held to answer for damages of a kind which she asserts are so dangerous and uncertain that they ought to be resisted.

Is she prepared to hold back from an invitation to offer or concur in what must bring such results?

What will be the gain to the United States? The settlement of a safe rule for the future, and the saving of the advantages to their interests, which are to be found in the friendly adjustment which was thought to have been made of all the questions likely to disturb the relations of the two countries, at the cost of giving up that portion of their demands for past injuries which they have been pressing, not with a view to obtaining pecuniary compensation, but only in the assertion of their right to have such an award from the Tribunal at Geneva as will make the Treaty of Washington what it was really intended to be, a means for wiping away forever from between these kindred nations all differences and complaints as well as all claims.

[From British Blue Book "North America," No. 9, (1872,) p. 19.]

No. 50.

Sir E. Thornton to Earl Granville.[1]

WASHINGTON, *May* 14, 1872. (Received May 26.)

MY LORD: I have the honor to inform your Lordship that, during a conversation which I had late last night with Mr. Fish, he said that the public was extremely anxious and intensely curious as to what had lately passed between the two Governments on the subject of the indirect claims, and that he thought it would be admirable to take some measure to allay this impatience. He suggested that it would be well either to send to Congress in open session, or to publish, the four notes which passed between your Lordship and General Schenck on the subject of claims for indirect damages, two telegrams relative to the presentation of the British Counter Case, and a dispatch from General Schenck to Mr. Fish, which the latter read to me. To the publication of the three latter there did not seem to be the slightest objection, nor, as I thought, to that of the four notes. But Mr. Fish did not seem satisfied with my opinion, and said that, as he did not wish to do anything which might at all embarrass Her Majesty's Government, he would rather that I would telegraph your Lordship upon the subject, in the hope that you would give your assent to the publication of the above-mentioned documents.

I have, &c.,

EDWD. THORNTON.

[From British Blue Book "North America," No. 9, (1872,) p. 20.]

No. 51.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 14, 1872.

SIR: I asked General Schenck to-day whether it would not be desirable to draught the identic note, to be addressed by the British and United States Agents to the Arbitrators, communicating to them the Treaty Article if it should be concluded.

General Schenck assented to this suggestion.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 9, (1872,) p. 20.]

No. 52.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 16, 1872.

SIR: As you have informed me by telegraph that the correspondence which has passed between Her Majesty's Government and the Government of the United States, respecting the claims for indirect losses put forward in the Case presented on the part of the United States to the Tribunal of Arbitration at Geneva, has been presented to open Congress by Mr. Fish, I have to state to you that the correspondence will also be published in a supplement to the London Gazette of to-morrow, together with the dispatch which I addressed to you on the 13th instant, commenting, for your information, on some of the historical parts of Mr. Fish's last dispatch.

I mentioned to General Schenck that this would probably be done.

You have been informed of the substance of this dispatch by telegraph.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 9, (1872,) p. 20.]

No. 53.

Sir E. Thornton to Earl Granville.[1]

[Extract.]

WASHINGTON, *May* 17, 1872. (Received May 28.)

I have the honor to inclose a copy of the New York Herald of the 15th instant, in which are published copies of the President's Message to the Senate in secret session, and of the documents which accompanied it. It is supposed that copies of these documents must, by some surreptitious means, have been abstracted from the Senate, and it is said that the whole of them were telegraphed to New York during the night of the 14th instant, at the expense of the New York Herald, which published them on the morning of the 15th instant.

Mr. Fish was informed by telegraph during that day that certain documents had been published, but could not discover whether the whole of them had appeared. He, however, at once forwarded to Congress in open session the four notes which have passed between your Lordship and General Schenck on the subject of the claims for indirect damages.

On the arrival here of the New York Herald, it was found that all the documents sent to the Senate on the 13th instant, with the exception of the memorandum inclosed in your Lordship's note of the 20th of March last, had been published. Mr. Fish told me yesterday that, in consequence of this publication, it was the opinion of the President and of himself, that it would be expedient to relieve the Senate of the injunction of secrecy with regard to these documents, so that they might become officially public; but that they were indisposed to do so if I thought Her Majesty's Government would object to it. I replied that, as the documents had been made public, and as it was evident that they were really copies of those which had been sent to the Senate, I could see no objection to their being officially published, in accordance with the President's wish; nor did I think it worth while to beg Mr. Fish to wait until I should have telegraphed to your Lordship and received an answer. But I at the same time strongly expressed my opinion that the discussion with regard to the Draft Treaty Article should not be held in open session, in favor of which a motion had been made on the 13th instant, but defeated. Mr. Fish entirely agreed with me that a public discussion would be most inexpedient.

With reference to the copy of Mr. Fish's telegram to General Schenck of the 27th ultimo, there is no doubt that, on that day, it was he who suggested that your Lordship should, in answer to his dispatch to General Schenck, make a proposal of the nature described in my telegram forwarded on the same day. The utmost that I did was, on his urging me to give my private opinion upon the suggestion, to say that I thought it might, with some modifications, be taken as the basis of an arrangement; but I did not, and of course could not, state, on hearing such a suggestion for the first time, that Her Majesty's Government would or would not make a proposal of the nature indicated by Mr. Fish.

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[1] The substance of this dispatch was received by telegraph on the 17th of May.

His telegram to General Schenck, of the 27th ultimo, was sent after I had received, and in consequence of, your Lordship's telegram of the same day, the contents of which I communicated to him, and in which your Lordship stated that the apparent absence of instructions to the American Minister, with whom the negotiation was being conducted, was a great obstacle to an arrangement.

[From British Blue Book "North America," No. 9, (1872,) p. 21.]

No. 54.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 17, 1872.

SIR: I have received your dispatch of the 30th ultimo, reporting your conversation with Mr. Fish on the subject of the indirect claims; and, in reply, I have to acquaint you that Her Majesty's Government approve your guarded language on this subject, as reported in your dispatch.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 9, (1872,) p. 21.]

No. 55.

Earl Granville to General Schenck.

DEAL, *May* 17, 1872.

MY DEAR GENERAL SCHENCK: If the Senate agree with the President of the United States to adopt the proposed Treaty Article, I shall instruct Sir Edward Thornton to sign it, in order to save time.

I shall be glad to have your opinion as to how the same object could be obtained with regard to the notes communicating the Treaty Article to the Tribunal of Geneva, of which we agreed I had better prepare a draft.

Should I remit it to you or to Sir Edward Thornton?

Yours, sincerely,

GRANVILLE.

[From British Blue Book "North America," No. 9, (1872,) p. 21.]

No. 56.

General Schenck to Earl Granville.

[Extract.]

58 GREAT CUMBERLAND PLACE, HYDE PARK,
May 18, 1872. (Received May 18.)

It appears to me that, when you instruct Sir Edward Thornton in regard to signing the Treaty, if it should be concluded, it would be as well to have the joint note to the Arbitrators, bringing it to their notice, signed at the same time by him and Mr. Fish.

If it were not for the greater convenience, and saving of time when time may be precious, I confess I should have been glad if you and I could have put our hands and seals to it together.

[From British Blue Book "North America," No. 9, (1872,) p. 22.]

No. 57.

Sir E. Thornton to Earl Granville.[1]

(Extract.)

WASHINGTON, *May* 20, 1872. (Received June 2.)

On Sunday I called upon Mr. Fish at his own house, and having previously heard that the Committee on Foreign Relations had agreed by a majority of 4 to 3, or, as some said, of 5 to 2, upon its report on the Article, and had actually made it to the Senate in secret session, I asked Mr. Fish whether he could tell me what the amendments were which had been made to the Article. He replied, that he was not in possession of the words of the Article, as it had been reported by the Committee to the Senate, but would endeavor to describe them to me.

He said that the first paragraph of the Article, down to the words "Great Britain," would remain the same; but that, with regard to the next paragraph, the Committee had objected that Her Majesty's Government had not yet declared, but was only now going to declare, by the present article, that the principle involved in the second contention would guide its conduct for the future.

The Committee also thought it better that the "Government" should be substituted for the "President" in the third paragraph, and as it seemed to have an objection to the phrase, "adhering to its contention," it had been proposed that it should be altered, and that both Governments should then agree that their conduct in future, and in their relations with each other, should be guided by the above-mentioned principle. Mr. Fish said that the committee supposed that neither Government wished to bind itself in this Article as to its relations with any other Power.

If Mr. Fish's description is correct, it would not seem that any alteration has been made in the substance of the Draft Article.

Your Lordship will have perceived that, in sending the Draft Article to the Senate for its advice, the President quoted the precedent of the Treaty of 1846 on the Northwest Boundary. If the Draft Article should be now approved, and if the same precedent is still to be followed, the Article will have to be signed, and again submitted to the Senate for its sanction. This must either be done before the 29th instant, the day now fixed for the final adjournment of the session, or the President will have to summon an extraordinary session of the Senate, for the purpose of submitting to it the signed Article.

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[1] The substance of this dispatch was received by telegraph on the 20th of May.

No. 58.

General Schenck to Mr. Fish.

No. 239.] LEGATION OF THE UNITED STATES,
London, May 25, 1872. (Received June 5.)

SIR: I forward herewith copies of a correspondence which has taken place between Lord Granville and myself in regard to the proposed identic notes to be communicated to the Arbitrators at Geneva, in case of the new Treaty Article being adopted, together with a copy of His Lordship's original draught of said identic notes sent to me in his letter of the 20th instant.

I have the honor to be, sir, your obedient servant,
(In the absence of General Schenck,)
BENJAMIN MORAN.

[Inclosure 1 in No. 58.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *May* 20, 1872.

SIR: We agree that it might save time, in case of the Treaty being adopted, if I were to prepare a form of notes from Her Majesty's Government and the Government of the United States, communicating the Treaty to the Tribunal of Arbitration at Geneva.

I therefore send you the draught which I have prepared.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 2 in No. 58.]

Draught of Identic Note to the Arbitrators.

The undersigned, *Agent of Her Britannic Majesty,* (*Agent of the United States,*) is instructed by *Her Majesty's Government* (*the Government of the United States*) to transmit to ——— the accompanying Declaratory Convention, concluded on ——— between Her Britannic Majesty and the United States of America, by which it is provided that, in consideration of the agreement therein set forth, the President of the United States will make no claim on the part of the United States in respect of the indirect losses stated in the Case presented on the part of the Government of the United States to the Tribunal of Arbitration on the 15th of December, viz: "The loss in the transfer of the American commercial marine to the British flag, the enhanced payments of insurance, and the addition of a large sum of the cost of the war and the suppression of the rebellion."

In accordance with the provisions of this Convention the undersigned has the honor, on the part of the Government which he represents, to request that no claims for indirect losses as aforesaid may be entertained by the Tribunal.

[Inclosure 3 in No. 58.]

General Schenck to Lord Granville.

TORQUAY, *May* 22, 1872.

MY LORD: Your note of the 20th, covering a draught of a form of note suggested for communicating the new Treaty Article, if adopted, to the Arbitrators, was delivered to Mr. Moran last evening, and reached me here this morning.

I shall hasten to submit it by telegraph to Mr. Fish, so that, if the occasion comes, no time may be lost in having it ready as agreed on.

I have the honor to be, with the highest consideration, your Lordship's most obedient servant,

ROBERT C. SCHENCK.

[From British Blue Book "North America," No. 9, (1872,) p. 23.]

No. 59.

Mr. Fish to General Schenck. (*Communicated by Mr. Moran, May* 25, 11.45 *a. m.*)

[Telegraphic.]

The Senate will undoubtedly amend the proposed Article. The terms of the note to the Arbitrators cannot be fixed until the language of the Article is agreed upon.

FISH.

[From British Blue Book "North America," No. 9, (1872,) p. 23.]

No. 60.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 25, 1872—3 p. m.

SIR: I have given to the United States Legation a copy of the inclosed draft of preamble to a Treaty, in which the Article now before the Senate would be contained, supposing that the Article should come out from the Senate in a form which Her Majesty's Government could accept.

You may give it confidentially to Mr. Fish, explaining to him that the preamble has been framed with reference to that contingency alone, and in order to save time in the two Governments coming to an agreement on the terms of preamble if this contingency should be realized.

I am, &c.,

GRANVILLE.

No. 61.

Mr. Fish to General Schenck.

[Telegram.]

DEPARTMENT OF STATE,
Washington, May 26, 1872. (Sent at 2.30 a. m.)

The President having requested an expression by the Senate of their disposition in regard to advising and consenting to the formal adoption of the Article proposed by the British Government, as communicated in your telegram of May 10, that body has amended the proposed Article, and agrees to advise and consent to its adoption in the following terms:

Down to and including the words Great Britain, the same as in the Article proposed; then the following:

And whereas the Government of the United States has contended that the said claims were included in the Treaty; and

Whereas both Governments adopt for the future the principle that claims for remote or indirect losses should not be admitted as the result of failure to observe neutral obligations, so far as to declare that it will hereafter guide the conduct of both Governments in their relations with each other: Now, therefore,

In consideration thereof, the President of the United States, by and with the advice and consent of the Senate thereof, consents that he will make no claim on the part of the United States, in respect of indirect losses as aforesaid, before the Tribunal of Arbitration at Geneva.

You will, without delay, inform Lord Granville that, in pursuance of this action of the Senate, the President will negotiate a new Article in the terms and to the effect of the foregoing. You will also say to him that the two Houses of Congress have passed a concurrent resolution to adjourn *sine die* on the 29th instant, and that a treaty embodying the Article must be presented to the Senate and receive its approval. It is important, therefore, that authority be speedily given to Her Majesty's Minister here to sign the convention, if the British Government concludes to enter into the agreement.

A copy of the Article[1] has been furnished to Sir Edward Thornton.

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[1] The differences between the Article suggested by Great Britain, submitted to the Senate May 13, and the article adopted by the Senate May 25, are shown in parallel columns below. The left-hand column gives the text proposed by Great Britain; the right-hand column shows the alterations made by the Senate:

Whereas the Government of Her Britannic Majesty has contended in the recent correspondence with the Government of the United States as follows, namely: That such indirect claims as those for the national losses stated in the Case presented, on the part of the Government of the United States, to the Tribunal of Arbitration at Geneva, to have been sustained by the loss in the transfer of the American commercial marine to the British flag; the enhanced payments of insurance; the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion—Firstly, were not included in the Treaty of Washington, and further, and secondly, should not be admitted in principle as growing out of the acts committed by particular vessels, alleged to have been enabled to commit depredations upon the shipping of a belligerent, by reason of such want of due diligence in the performance of the neutral obligations as that which is imputed by the United States to Great Britain; and	
Whereas the Government of Her Britannic Majesty has also declared that the principle involved in the second of the contentions, hereinbefore set forth, will guide their conduct in future; and Whereas the President of the United States, whilst adhering to his contention that the said claims were included in the Treaty, adopts for the future the principle contained in the second of the said contentions, so far as to declare that it will hereafter guide the conduct of the Government of the United States, and the two countries are therefore agreed in this respect.	Whereas the Government of the United States has contended that the said claims were included in the Treaty; and Whereas both Governments adopt for the future the principle that claims for remote or indirect losses should not be admitted as the result of failure to observe neutral obligations, so far as to declare that it will hereafter guide the conduct of both Governments in their relations with each other: Now, therefore,
In consideration thereof, the President of the United States, by and with the advice and consent of the Senate thereof, consents that he will make no claim on the part of the United States, in respect of indirect losses as aforesaid, before the Tribunal of Arbitration at Geneva.	

[From British Blue Book "North America" No. 9, (1872,) p. 25.]

No. 62.

Sir E. Thornton to Earl Granville.[1]

WASHINGTON, *May* 27, 1872. (Received June 8.)

MY LORD: I have the honor to inclose copy of a note, dated the 25th instant, from Mr. Fish, and its inclosure, which I received yesterday at half past 1 p. m. It transmits copy of a resolution of the Senate, which was agreed to at half past 8 p. m. of the 25th instant, and which recommends to the President the negotiation with the British Government of an Article supplementary to the Treaty of Washington of May 8, 1871, to be ratified afterward by the Senate in the terms thereinafter mentioned.

Mr. Fish had, during the night of the 25th instant, given me what he believed to be the words of the Article as adopted by the Senate, but he could not guarantee their being correct. I thought it best, however, to telegraph them at once, though conditionally, to your Lordship, and they afterward turned out to be the exact words adopted by the Senate.

Your Lordship is aware that the whole of the discussion has been carried on in secret session, and as much annoyance was felt at the unauthorized publication by the New York Herald of the confidential documents which had been sent to the Senate on the 13th instant, Senators have been generally extremely reticent as to what has passed in the secret sessions.

From the best information, however, which I can obtain, I should imagine that the Committee on Foreign Relations, by a vote of 6 to 1, agreed to report an Article very nearly in the words in which it has been finally adopted by the Senate. It was reported to the Senate on the 22d instant, and was discussed on that and the three following days for several hours; the session on the 24th instant lasted for eight hours, finishing at 11:45 p. m. The majority by which the inclosed resolution was passed, has been variously stated, but I am inclined to think that the numbers were 43 to 8. It is said that several Senators were absent, and that some of those who were present refrained from voting.

I have, &c.,

EDWD. THORNTON.

[Inclosure 1 in No. 62.]

Mr. Fish to Sir E. Thornton.

DEPARTMENT OF STATE,
Washington, May 26, 1872.

SIR: I have the honor to inclose a copy of a resolution of the Senate of the United States, expressing its willingness to advise and consent to the adoption of a supplemental Article to the Treaty of Washington of May 8, 1871.

I have, &c.,

HAMILTON FISH.

[For inclosure 2 in No. 62, see p. 526.]

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[1] The substance of this dispatch was received by telegraph on the 27th of May.

No. 63.

Mr. Fish to General Schenck.

No. 213.] DEPARTMENT OF STATE,
Washington, May 28, 1872.

SIR: I have to acknowledge the receipt of your dispatch of the 14th instant, No. 225, relating to the proposed new Article to the Treaty of May 8, 1871, and the Memorandum which accompanied it. That Memorandum is a very able and comprehensive review of the case, and presents the position of the United States, in the main, very fully.

The object of the United States in insisting on retaining the indirect claims before the Tribunal was:

I. The right under the treaty to present them.

II. To have them disposed of and removed from further controversy.

III. To obtain a decision either for or against the liability of a neutral for claims of that description.

IV. If the liability of a neutral for such claims is admitted in the future, then to insist on payment by Great Britain for those of the past.

V. Having a case against Great Britain, to have the same principle applied to it that may in the future be invoked against the United States.

I am, &c.,

HAMILTON FISH.

No. 64.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 28, 1872. (Received at 1.15 a. m.)

I communicated your telegram of yesterday to Lord Granville. He submitted it to the Cabinet, who took it under long consideration. He has just given me their answer. It is as follows:

> Her Majesty's Government are of opinion that the definition by the Senate of the principle which both Governments are prepared to adopt for the future is so vague that it is impossible to state to what it is or is not applicable, and they believe that it would only lead to future misunderstandings. They prefer the article as they had draughted it, but have no objection to accept the article in the form proposed by the Senate, with the substitution of the words "of a like nature," for the words "for remote or indirect losses," and the substitution of the words "such want of due diligence on the part of a neutral," for the words "the failure to observe neutral obligations."

In reply to my inquiry of Lord Granville, whether any possible interpretation of the form proposed by the Senate would be held by them to prevent taking before the Arbitrators, to be considered by them in making their award, that part of the claims which relates to the cost of pursuit and capture of cruisers, he states that he must on behalf of Her Majesty's Government decline to answer my question as to the effect of the Article as altered by the Senate, or to state what possible construction it may bear. Lord Granville says he has informed Sir Edward Thornton that he may tell you Her Majesty's Government will not insist on the words you desire to omit from the preamble if you will give assurance in writing that the United States will agree to the form of note he proposed communicating the Convention on the part of the two

Governments to the Tribunal of Arbitration. Lord Granville tells me confidentially that Thornton informed him you had stated that the Committee on Foreign Affairs was ready to recommend the following form:

> And whereas the Government of the United States contend that the said claims were included in the Treaty, now the two Governments agree that the principle involved in the second of the contentions hereinbefore set forth by Her Majesty's Government will guide their conduct in future in their relations with each other.

Which proposal he says they were prepared to adopt.

SCHENCK.

No. 65.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *May* 28, 1872.

This Government declines to agree to the proposed altering of the supplementary Article. The establishment of the principle embodied therein has been its object in adhering to the presentation of the indirect claims, and its recognition is the inducement for not pressing them before the Tribunal.

FISH.

No. 66.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 28, 1872. (Received May 29, 7.30 a. m.)

Lord Granville has to-night, after another Cabinet, sent me the following further communication:

[*Earl Granville to General Schenck.*]

I think it desirable at once to address to you the following observations in addition to what is stated in my letter of yesterday. Her Majesty's Government proposed an Article on the suggestion of the American Government; that Article has been amended by the Senate. Her Majesty's Government are not able to find for it, as amended, any means or standard of interpretation; the words appear to include the willful misconduct of a neutral, as well as a failure from want of due diligence. They cannot suppose this to be the meaning of the American Government. Her Majesty's Government hold all the claims made by the United States for losses which were the direct results of the acts of vessels mentioned in the Treaty, to be claims for indirect losses as the result of the failure to observe neutral obligations. Her Majesty's Government hold many of the claims for the losses above mentioned to be claims for losses which are remote as well as indirect, while resulting from a failure to observe neutral obligations. Her Majesty's Government are unable to signify an assent to a form of Article of which they cannot for themselves discover the scope, and with respect to which, owing, probably, to the difficulty of telegraphic communication, they have not been apprised of the meaning which the American Government attaches to it, or of the reasons which have led to its being proposed. If the Government of the United States think it desirable to give the information which Her Majesty's Government wish to receive on these points, and also think that for that purpose some adjournment of the time of meeting of the Arbitrators at Geneva should take place, Her Majesty's Government would be ready to agree to any suitable proposal for that purpose, which they presume could only be done by a short treaty between the two Governments.

SCHENCK.

No. 67.

Mr. Fish to General Schenck.

[Extract.]

No. 214.] DEPARTMENT OF STATE,
Washington, May 28, 1872.

SIR: Late last evening Sir Edward Thornton called at my house having, as he stated, a telegram from Lord Granville, the general purport of which he mentioned, to the effect that the British Government having received the amendment proposed by this Government to their proposed supplemental Article, would prefer their own draught, but that they would accept the proposed alteration, substituting, however, for the words "for remote or indirect losses," the words "of a like nature," and for the words "failure to observe neutral obligations," the words "such want of due diligence on the part of a neutral."

I told him frankly, and earnestly, that no change or alteration of any kind is admissible or can be entertained. I added that the United States now have a case against Great Britain, he interrupting me by saying, "the United States *think* they now have a case." I proceeded, saying; that it made no difference, that having now a case, they desire to press it for a decision, or to have the principle of exemption of national liability for indirect losses established for the future; that that principle is the equivalent or consideration of abstaining from a demand before the Tribunal for damages on account of the indirect losses; that as now altered, the Article prevents the presentation of indirect claims against the United States, on account of the Fenian raids, while the British draught would exclude only claims arising from the acts of vessels, &c., and under circumstances which may possibly never again occur. * *

He then asked me about the preamble and the proposed note to the Arbitrators. In reply, I told him that it was useless to discuss either while his Government is contemplating any change in the Article.

He said it might be well to have an understanding, in order to save time in case his Government accept the alterations made to the Article.

In this view, I showed him a draught of a preamble which had been prepared in the Department, reciting, simply, that the two Governments, deeming it advisable that "there should be an additional Article to the Treaty signed at Washington on the 8th day of May, 1871, have for that purpose named as their Plenipotentiaries," &c., and saying that I see no occasion for any other recital; and that as to the proposed note we will not sign it. He ask if there was any objection to their signing such note, to which I replied that we could not control them in that respect; they had the power to make such representations to the Tribunal as they thought proper; that there might be no objection on our part to the former part of the proposed note, but that the latter clause was not necessary, as the effect of the Article accomplished what was then stated as a request; that we would lay the Treaty, if agreed to, before the Tribunal, and our counsel would be guided by it, and would abstain from making any claim on account of the indirect lossess; but I desired not to be committed in advance of the agreement to the Article.

I then referred to the question raised by your telegram, received yesterday, as to the effect of the Article upon the claim for expense of pursuit of the cruisers, and added that I did not think there could be any doubt, as both Governments had, through the whole correspondence, treated this as a *direct* claim. With some reserve and caution, and disclaiming any authority to speak, he remarked that he believed that claim had been created as a direct claim; one on which the Tribunal was to pass, and decide whether or not it be one for which compensation is to be made.

I am this morning in the receipt of your telegram communicating the proposed changes to the Article which Sir Edward Thornton had communicated to me, as above mentioned.

Lord Granville's evasion of a reply to your question respecting the pursuit, &c., of the cruisers, is significant and suggestive of caution.

It is very possible that the whole thing will fail; if so, this country will stand before the world having done all that it could to maintain the Treaty, and the civilizing principle which it established. The responsibility of failure must rest with Great Britain, who evidently will have shown a reserved intent, and an object of future advantage not avowed. * * * Much as this Government will regret the failure, it can stand it as well as can Great Britain.

There are some things in the telegram received this morning which may require comment; but I incline to hope that what may seem arrogant in Lord Granville's remark, that he will not insist on certain language in the proposed preamble, arises from the constraint of the telegraphic form of communication; and so, too, the suggestion of a condition that assurance be given, in writing, of certain things.

As presented in your telegram, these observations appear such as I am confident you would not have listened to, without repelling them. I confidently hope that their unpleasant appearance is to be attributed to the style of telegraphic correspondence.

Sir Edward Thornton was told by me, some days since, what I understood would probably be the expected change recommended by the Senate committee. He has made some mistakes in transmitting it. I gave him no copy; he must have reported it from memory. But whatever it was, it was a thing under consideration, and the committee's report was changed by the Senate. I see, therefore, no importance to be attached to a variance in the final action of the Senate from what was at one time expected; although what was expected is different from what Lord Granville has understood to have been expected.

I am, sir, your obedient servant,

HAMILTON FISH.

[From British Blue Book "North America," No. 9, (1872,) p. 27.]

No. 68.

Sir E. Thornton to Earl Granville.[1]

[Extract.]

WASHINGTON, *May* 28, 1872. (Received June 8.)

With regard to the alterations which Her Majesty's Government desires should be made in the supplementary Article as recommended by the recent decision of the Senate, Mr. Fish said that it was out of the power of the United States Government to accede to them, or indeed to any change of the words, as they had been decided upon by the Senate. He informed me that he had himself had a long discussion with the Committee on Foreign Relations of the Senate upon the subject, and that he was convinced, from the nature of that discussion, that it would be in vain to submit to the Senate the alterations now transmitted by your Lordship; for that it had been expressly intended by the Committee that the principle should be enlarged, and that the non-admittance of indirect claims should be extended to all such claims, and should not be limited to those of that particular class which were specified in the contention of Her Majesty's Government.

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[1] The substance of this dispatch was received by telegraph on the 28th of May.

These views of the Committee had been fully supported by the Senate, who considered that the adoption of the wider principle with regard to indirect claims would be an equivalent for the consent given by the President that he would make no claim for indirect losses before the Tribunal of Arbitration at Geneva. He was convinced, from his knowledge of the feelings of the Senate upon the subject, that any further appeal to that body would have no effect whatever.

From a great deal that I have heard from other quarters, and from the extreme difficulty with which the sanction of the Senate has been obtained to the supplementary Article, even as modified by it, I cannot but acquiesce in Mr. Fish's opinion that any further reference to the Senate would be of no avail.

[From British Blue Book "North America," No. 9, (1872,) p. 30.]

No. 69.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 28, 1872.

SIR: I asked General Schenck to-day whether he had received any instructions from his Government to inform her Majesty's Government of what was the scope and extent of the principle which is proposed by them to us in the draught Article which has been recommended by the Senate.

He answered that he had received none excepting those which were contained in the several telegrams which have been communicated to Her Majesty's Government, and he added that the general principle could only be laid down and the interpretation made when cases arise.

He referred me again for explanation of the position taken by the United States, including their view in relation to the necessity of a general rule with regard to indirect damages, to the remarks which he made to me and reduced to writing, and of which he furnished me a copy on the 10th of May. He added that the Article as passed by the Senate was connected with what he had therein stated.

I replied that I had no recollection of anything which he had written on the 10th of May, defining in any degree the scope or extent of such an Article as was now proposed.

Our conversation was interrupted by the necessity of my attending a Cabinet.

I am, &c.,

GRANVILLE.

No. 70.

Mr. Fish to General Schenck.

[Telegram.—Extract.]

WASHINGTON, *May* 29, 1872.

Your telegram of last night received this morning. We cannot understand the objections which Lord Granville raises. He raises new issues, but suggests nothing in the direction of an agreement. Criticism and objection without suggestions lead to no results, and do not give assurance of a desire to harmonize differing views.

You have informally suggested various modes of agreement, but Great Britain has met all with the demand to withdraw claims which we feel we were justified under the Treaty in presenting, while the obligations which Great Britain has in various forms proffered on her part have all been substantially the same, and have been vague, uncertain, ideal, and not likely ever to become available.

The Article proposed by the Senate is fair, candid, and reciprocal. This Government has endeavored to express its views, objects, and meaning with respect to the principle embodied therein in the correspondence which has taken place, and in the communications which you have had with Her Majesty's Minister of Foreign Affairs.

As the proposed Article, if it is to become a Treaty, must be signed and be submitted to the Senate for approval, but two days remain within which that approval can be had, and the Treaty forwarded to London to enable the ratifications to be exchanged in time to be presented to the Arbitrators at their meeting in June.

Further explanations of the views of the Government seem, therefore, impossible to be interchanged between here and London; but you may be able to explain these views as they have been communicated to you from this Department.

The President is extremely anxious to preserve a Treaty embodying and giving practical application to the doctrine of arbitration as a mode of settling international differences, and for that end has been willing to make large concessions.

You will call the attention of Her Majesty's Minister to the fact that unless the Treaty be signed and approved by the Senate, so that the President's ratification can leave here the day after to-morrow and go by Saturday's steamer, it cannot reach London in time to be there exchanged, and be presented to the Arbitrators at their meeting on 15th June.

The suggestion of another treaty to adjourn the meeting at Geneva seems impracticable. The Senate is in the last days of its session, with much important legislation pending, and every hour of its time preoccupied. In the absence of any indication of a disposition on the part of the British Government to suggest anything to which this Government could assent, it would be impossible to secure enough of the time of the Senate to agree to a treaty which promises only further delay and procrastination.

I regret not to see an indication of a desire or disposition on the part of the British Government to come to an agreement which will be honorable to this Government.

If the British Government has any proposals to make they will be fairly considered, with the most sincere desire of a frank, friendly, and honorable agreement. We neither ask nor will consent to anything else.

* * * * * * *

The tone of Lord Granville's notes seems to assume that the Senate and this Government are to accept what Great Britain may have suggested. Our view is very different.

FISH.

[From British Blue Book "North America," No. 9, (1872,) p. 32.]

No. 71.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 29, 1872.

SIR: General Schenck called upon me early this morning, and informed me that he had received a telegram from Mr. Fish stating that the Government of the United States declined to agree to the alterations which Her Majesty's Government had proposed, as set forth in my letter to him of the 27th instant, in the Article of the supplementary Treaty.

Mr. Fish says that, holding to the opinion that the claims for indirect losses are admissible before the Arbitrators, the establishment of the principle embodied in the Article, or assented to by the Senate, has been its object in adhering to that Article; and that the recognition of that principle by such supplementary Treaty will be the inducement for withdrawing the claims.

General Schenck further said that he last telegraphed to Washington last night the whole of the communication, containing the additional obeservation which I made to him in my letter of yesterday, but that he did not expect to receive any further telegram from his Government before early to-morrow morning. He understood that Congress had agreed not to adjourn till next Monday, the 3d of June. Before that day, and probably to-morrow, he expects to receive a reply to the proposal to extend the time for arbitration beyond the 15th of June, and he therefore thought he should not have to trouble me before noon to-morrow.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 9, (1872,) p. 32.]

No. 72.

Memorandum communicated by General Schenck, May 30, 1872.

I assume that your object, like ours, is to affirm the principle that neutrals are not to be held liable for indirect and remote damages which may be the result of a failure to observe neutral obligations, and to establish that principle, as a rule, to be observed between our two nations. Your proposed form of Article, as it was amended by the Senate, we think does that. You think it is too vague. We think your proposal, either as originally made, or as modified by your proposed amendment of the language of the Senate, would be altogether uncertain as a rule in practice, confines itself to hypothetical cases which may never occur; and, instead of recognizing and applying the general principle, limits the rule to some three classes, only indirect claims, being those which are put forth by the United States in their Case at Geneva.

No. 73.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 30, 1872. (Received 9 p. m.)

Your telegram of yesterday received and communicated to Lord Granville. He said he would confine himself to one remark, namely, that your statement at the beginning from the words "he raises," down to the word "views," was inexplicable to him. What had been the course they had pursued? They had at the request of the Government of the United States draughted an Article founded on an idea of that Government. The Government of the United States had amended that Article, and in answer they had not merely stated an objection to the amendment, but had draughted a re-amended Article for their consideration. He said he would not make any further argument until he had submitted to his colleagues the communication which had just been made to him. I stated that I did not wish to go into any argument, but would just state again what was my view of the present situation and difference between us, though it was but repeating former statements. I said to him, "I assume that your object, like ours, is to affirm the principle that neutrals are not to be held liable for indirect and remote damages, which may be the result of a failure to observe neutral obligations, and to establish that principle as a rule to be observed between our two nations. Your proposed form of Article, as it was amended by the Senate, we think does that. You think it is too vague. We think your proposal, either as originally made or as modified by your proposed amendment of the language of the Senate, would be altogether uncertain, as a rule in practice confines itself to hypothetical cases which may never occur, and, instead of recognizing and applying the general principle, limits the rule to some three classes only of indirect claims, being those which are put forward by the United States in their Case at Geneva." The Cabinet is now in session.

SCHENCK.

No. 74.

General Schenck to Mr. Fish.

No. 243.] LEGATION OF THE UNITED STATES,
London, May 30, 1872. (Received June 11.)

SIR: Inclosed with this I send copies of all written correspondence which has passed between Lord Granville and me since my No. 239. These notes taken in connection with the several telegrams which have passed between you and me, of which copies are also forwarded to you with another dispatch to-day, will bring up the history of what has taken place here for the last five days in relation to the proposal for a supplementary Treaty. Your telegram of the 28th, declining, on the part of the United States, to agree to the proposed altering of the supplementary Treaty, was received in the night and communicated to Lord Granville very early yesterday morning. I would give you, with these documents, some narrative and comments, and it was my intention to do so, but your long telegram in answer to the observations of Lord Granville, contained in his note which I telegraphed to you in full at midnight of the 28th, has this moment arrived and requires to be deciphered and to have my immediate attention, so that it will not be possible to give any other communication by the mail which is made up for Queenstown to-day.

I have the honor to be, sir, your obedient servant,

ROBERT C. SCHENCK.

[Inclosure 1 in No. 74.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *May 27*, 1872.

SIR: I instructed Sir E. Thornton to communicate to Mr. Fish the accompanying form of preamble to which Her Majesty's Government were prepared to agree in case a convention should be concluded embodying the draught Article. I have learned from Sir E. Thornton that Mr. Fish would prefer the omission of the words "in order that the same may be communicated to the Tribunal of Arbitration, appointed under the first article of the Treaty signed at Washington on the 8th of May, 1871, for the guidance of the proceedings of that Tribunal," and I have this day informed Sir E. Thornton that he may tell Mr. Fish that Her Majesty's Government will not insist on the words which he desires to omit in the preamble, if he will give Sir E. Thornton an assurance in writing that the Government of the United States will agree to the form of note which I proposed, and of which I sent you a copy on the 20th instant, communicating the Convention on the part of the two Governments to the Tribunal of Arbitration at Geneva. I have to add that Sir E. Thornton has a general full power enabling him to sign a Convention, and instructions to do so if the proposals contained in this, and in my other letters of this day's date, are agreed to.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 2 in No. 74.]

Proposed preamble to supplemental Treaty.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having resolved to conclude a Convention in the terms of the Articles hereinafter set forth, in order that the same may be communicated to the Tribunal of Arbitration appointed under the first Article of the Treaty signed at Washington, on the 8th of May, 1871, for the guidance of the proceedings of that Tribunal, have named as their Plenipotentiaries, that is to say——

[Inclosure 3 in No. 74.]

Earl Granville to General Schenck.

FOREIGN OFFICE, LONDON, *May 27*, 1872.

SIR: I have lost no time in laying before the Cabinet the telegraphic dispatch from Mr. Fish, which you communicated to me this afternoon, informing you of the result of the deliberations of the Senate on the draught Article submitted for their advice by the President of the United States. It appeared from this dispatch that the Senate had agreed to advise and consent to the adoption of the proposed article, with the substitution for the third and fourth paragraphs, of two paragraphs, as follows:

"And whereas the Government of the United States has contended that the said claims were included in the Treaty; and whereas both Governments adopt for the future the principle that claims for remote or indirect losses should not be admitted as the result of the failure to observe neutral obligations, so far as to declare that it will hereafter guide the conduct of both Governments in their relations with each other, now, therefore," &c.

In communicating this dispatch to me, you inquired whether any possible interpretation could be given to the proposed Article in the form in which the Senate have modified it, taking all its parts together, which would prevent taking before the Arbitrators, to be considered by them in making their award, that part of the claim called "direct claims" in the Case, which relates to the cost of pursuit and capture of cruisers.

I have now the honor to state that I must, on behalf of Her Majesty's Government, decline to answer the question which you have put to me as to the effect of the article as altered by the Senate, or to state what possible construction it may bear.

Her Majesty's Government are of opinion that the definition as therein expressed, of the principle which both Governments are prepared to adopt for the future, is so vague that it is impossible to state to what it is or is not applicable, and they believe that it would only lead to future misunderstandings. That Her Majesty's Government prefer the Article as they had draughted it, but have no objection to accept the Article in the form proposed by the Senate, with the substitution of the words "of a like nature" for the words "for remote and indirect losses," and the substitution of the words "such want of due diligence on the part of a neutral" for the words "the failure to observe neutral obligations." The article would then run thus: "And whereas both Governments adopt for the future the principle that claims of a like nature should not be admitted as the result of such a want of due diligence on the part of a neutral, so far as to declare that it will hereafter guide the conduct of both Governments in their relations with each other."

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 4 in No. 74.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, May 28, 1872.

MY LORD: I received late last evening your note of yesterday's date, informing me, in relation to the form of preamble which you had instructed Sir Edward Thornton to communicate to Mr. Fish, as that to which Her Majesty's Government were prepared to agree in case a convention should be concluded embodying the draught Article, that you had since learned from Sir Edward that Mr. Fish would prefer the omission of the words "in order that the same may be communicated to the Tribunal of Arbitration appointed under the first Article of the Treaty signed at Washington, on the 8th of May, 1871, for the guidance of the proceedings of that Tribunal," and that you had informed Sir Edward Thornton that he might tell Mr. Fish that Her Majesty's Government will not insist on the words which he desires to omit in the preamble, if he will give Sir Edward Thornton assurance, in writing, that the Government of the United States will agree to the form of note which you proposed, and of which you sent me a copy on the 20th instant, communicating the Convention on the part of the two Governments to the Tribunal of Arbitration at Geneva.

In the same note you add that Sir Edward Thornton has a general full power, enabling him to sign a convention, and instructions to do so if the proposals contained in that note and in your other letter of the same date are agreed to.

Immediately after the receipt of your note last night I communicated to Mr. Fish, by telegraph, information of that instruction you had given to Sir Edward Thornton in regard to omitting the words in question from the preamble. I had previously, and early in the day yesterday, telegraphed to Mr. Fish the information you had already given me verbally, that Sir Edward Thornton had a full power to sign a convention.

But I remark now, that the instructions to Her Majesty's Minister at Washington appear by your note to have been given to be exercised on a condition. I beg to know from your Lordship if I am to understand that Sir Edward Thornton's authority to sign is limited by his instructions, and only to be used in the case that the proposals contained in your notes addressed to me yesterday are agreed to by the United States.

I have the honor to be, with the highest consideration, my Lord, your Lordship's most obedient servant,

ROBT. C. SCHENCK.

[Inclosure 5 in No. 74.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, May 28, 1872.

MY LORD: I received last night, between 9 and 10 o'clock, your note informing me that you had lost no time in laying before the Cabinet the telegraphic dispatch from Mr. Fish, which I communicated to you yesterday, informing you of the result of the deliberations of the Senate on the draught Article, submitted for their advice by the President of the United States.

You remark that in communicating that dispatch to you I inquired whether any possible interpretation could be given to the proposed Article in the form in which the Senate have modified it, taking all its parts together, which would prevent taking before the Arbitrators, to be considered by them in making their award, that part of the claim called "direct claims" in the Case, which relates to the cost of pursuit and capture of cruisers; and you state that you must, on behalf of Her Majesty's Government, decline to answer that question as to the effect of the Article as altered by the Senate, or to state what possible construction it may bear.

I will here only interpose, as to that question, to say that the point was brought to your Lordship's attention, in connection with the delivery to you of the Article as the Senate had proposed to amend it, because I desired by the inquiry to remind you that whatever might become the form in which the article might ultimately be adopted, it could not be intended to open any question in relation to claims to the introduction of which Her Majesty's Government had never objected, "notwithstanding the doubt how far those claims, though mentioned during the conferences as direct claims, came within the proper scope of arbitration."

I quote the language of your Lordship's note to me of the 20th of March last. The Government of the United States is of opinion that the language of the Senate cannot be interpreted to exclude those claims; but I am now instructed to say that the Article, in whatever form adopted, as to the proceeding before the Arbitrators at Geneva, must be understood to prevent only the presentation of the claims enumerated in the second contention of Her Majesty's Government.

Your Lordship in this note proceeds to inform me that Her Majesty's Government are of opinion that the definition, as expressed in the Senate amendment, of the principle which both Governments are prepared to adopt for the future is so vague that it is impossible to state to what it is or is not applicable, and they believe that it would only lead to future misunderstandings. That Her Majesty's Government prefer the Article as they had draughted it, but have no objection to accept the Article in the form proposed by the Senate, with the substitution of the words "of a like nature" for the words "for remote or indirect losses," and the substitution of the words "such want of due diligence on the part of a neutral" for the words "the failure to observe neutral obligations." The Article would then run thus: "And whereas both Governments adopt for the future the principle that claims of a like nature should not be admitted as the result of such a want of due diligence on the part of a neutral, so far as to declare that it will hereafter guide the conduct of both Governments in their relations with each other."

I hastened last night to telegraph the full substance of all this communication to Mr. Fish.

I am as yet without any answer to that telegram, and without instruction or information as to the disposition of my Government to entertain or consider the changes which Her Majesty's Government propose to the Senate's amendment. But I am not prepared to believe that the modification can be assented to by the President. Such change of language would alter the whole character of the agreement.

I cannot permit to pass unquestioned the expression of the opinion of Her Majesty's Government as to the vagueness of the definition of the principle which both Governments are prepared to adopt, and of the impossibility of stating to what it is or is not applicable, although in replying I may but in effect repeat what I said to you in an interview of the 10th of this month, and of which I gave you a memorandum in writing.

What the United States has all along proposed as the ground on which the two Governments might safely, honorably, and consistently meet, is the establishment of a rule, to be the law or contract in the future between them, declaring that neither of them shall demand compensation from the other for remote or indirect losses arising out of, or being the result of, failure in the observance of neutral obligations. This rule should be the expression of a principle to be applied to cases as they may arise; and ought not to consist in a reference to cases or circumstances which may or may not ever occur, and be limited to those instances, without application to other cases in which the damage done or alleged may be equally or further removed from the act of which it is assumed to be the result.

They do not see that there is vagueness in such a rule or difficulty in its application to facts, beyond what may be said of any other principle embodied in statute or treaty law.

Consider, my Lord, what is the history of that difference between our two Governments which has led to the negotiation for a supplemental Treaty Article.

The United States have put forward in their Case at Geneva, for the consideration of the Arbitrators, certain claims, to which the British Government objects. Great Britain founds her objection to those claims not merely on her interpretation of the Treaty, according to which she insists they are inadmissible, but also on the ground that such claims are, from their very character and nature, such as ought not to be presented; "that such claims," to use the emphatic language of your Lordship, "are wholly beyond the reasonable scope of *any* treaty of arbitration whatever, and that to submit them for decision by the Tribunal would be a measure fraught with pernicious consequences to the interests of all nations and to the future peace of the world." That Her Majesty's Government "cannot see that it would be advantageous to either country to render the obligations of neutrality so onerous as they would become if claims of this nature were to be treated as proper subjects of international arbitration."

What is that nature of the claims in question which makes them so objectionable to Her Majesty's Government? They are indirect, remote, consequential.

Will you, then, unite with us, asks the Government of the United States, in an agreement founded upon that principle for which you contend, and as broad as the principle itself, "that claims for remote or indirect losses should not be admitted as the result of failure to observe neutral obligations;" and will you unite with us in a declaration that this principle "will hereafter guide the conduct of both Governments in their relations to each other?" Can Great Britain continue to reply that while she desires to make such a rule, a rule consistent with the position she has taken against the whole class of remote or indirect claims, against a neutral, she must persist in confining it in terms to only such peculiar descriptions of that class of indirect claims as happen now to be the subject of contention between her and the United States, and which particular kind of claims may never have existence again? Will it not seem, if this be the limit of the agreement, that the object is not to affirm and vindicate an important principle, but only to find an expedient for excluding from consideration, or extinguishing altogether, certain matters which are unfortunately now a present cause of controversy?

I have the honor to be, with the highest consideration, my Lord, your Lordship's most obedient servant,

ROBT. C. SCHENCK.

[Inclosure 6 in No. 74.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *London, May* 28, 1872.

SIR: In reply to the inquiry contained in your letter of this day, respecting the limitation placed upon the immediate exercise by Sir Edward Thornton of the general full power to sign treaties with which he is provided, I have the honor to acquaint you that while we are far from asserting that the form of Article proposed by Her Majesty's Government is not capable of further improvement upon sufficient cause being shown, Sir Edward Thornton has no instructions to use his full powers, except in accordance with the arrangement we have proposed.

I have the honor to be, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 7 in No. 74.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *London May* 28, 1872.

SIR: I have to acknowledge the receipt of the letter which you have done me the honor to address to me, in reply to my letter of yesterday, in which I informed you that I had laid before the Cabinet the telegraphic dispatch from Mr. Fish, stating the result of the deliberations of the Senate on the draught Article submitted by the President for their advice.

As you acquainted me to-day that you had not received any reply from Mr. Fish to your communication of my letter, I think it better to defer till I hear from you the view taken of my letter by Mr. Fish, before replying to the observations contained in your letter.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 8 in No. 74.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *London, May* 28, 1872.

SIR: I think it desirable at once to address to you the following observations, in addition to what is stated in my letter of yesterday:

Her Majesty's Government proposed an Article on the suggestion of the American Government.

That Article has been amended by the Senate.

Her Majesty's Government are not able to find for it, as amended, any means or standard of interpretation.

The words appear to include the willful misconduct of a neutral as well as a failure from want of due diligence.

They cannot suppose this to be the meaning of the American Government.

Her Majesty's Government hold all the claims made by the United States for losses which were the direct results of the acts of vessels mentioned in the Treaty, to be claims for "indirect losses as the result of the failure to observe neutral obligations."

Her Majesty's Government hold many of the claims for the losses above mentioned to be claims for losses which are "remote" as well as "indirect," while "resulting from a failure to observe neutral obligations."

Her Majesty's Government are unable to signify an assent to a form of Article of which they cannot for themselves discover the scope, and with respect to which, owing probably to the difficulty of telegraphic communication, they have not been apprised of the meaning which the American Government attaches to it, or of the reasons which have led to its being proposed.

If the Government of the United States think it desirable to give the information which Her Majesty's Government wish to receive on these points, and also think that for that purpose some adjournment of the time of meeting of the Arbitrators of Geneva should take place, Her Majesty's Government would be ready to agree to any suitable proposal for that purpose, which they presume could only be done by a short treaty between the two Governments.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant.

GRANVILLE.

[Inclosure 9 in No. 74.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, May 28, 1872.

MY LORD: I received at 8 o'clock this evening your note of this date, in which you say you think it desirable to address to me, as you therein proceed to do, some observations in addition to what is stated in your letter of yesterday.

I shall hasten to-night to communicate the whole of this note by telegraph to my Government.

I have the honor to be, with the highest consideration, my Lord, your Lordship's most obedient servant,

ROBT. C. SCHENCK.

No. 75.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *May* 31, 1872. (Received 7.35 a. m.)

At 2.45 this morning Lord Granville sends me the following, dated 30th:

[*Earl Granville to General Schenck.*]

SIR: I am unable to admit the accuracy of the description which Mr. Fish has given in the telegraphic message which you have communicated to me to-day of the course which Her Majesty's Government has pursued, or of the objects which they have had in view. I can only attribute such a misunderstanding to the imperfection unvoidably attendant on negotiations by telegraph, which makes it difficult for either party clearly to understand the views and arguments of the other. This circumstance seems to strengthen the reason for the suggestion which I made in favor of an adjournment of the meeting of the Tribunal of Arbitration at Geneva. Her Majesty's Government have stated their objections to the words proposed by the Senate. I have already informed you that they did not pretend that the words suggested by themselves were incapable of improvement, and they have resolved to make a suggestion which they trust will meet the views of both Governments. I proceed therefore to put you in possession of a draught Article, of which I inclose a copy, and which, if adopted by the Government of the United States, Her Majesty's Government would be prepared to accept:

"Whereas the Government of Her Britannic Majesty has contended in the recent correspondence with the Government of the United States as follows, namely, that such indirect claims as those for the national losses stated in the Case presented on the part of the Government of the United States to the Tribunal of Arbitration at Geneva, to have been sustained by the loss in the transfer of the American commercial marine to the British flag, the enhanced payments of insurance, the prolongation of the war, and the addition of a large sum to the cost of war and the suppression of the rebellion—firstly, were not included in fact in the Treaty of Washington; and further and secondly, should not be admitted in principle as growing out of the acts committed by particular vessels alleged to have been enabled to commit depredations upon the shipping of a belligerent by reason of such a want of due diligence in the performance of neutral obligations as that which is imputed by the United States to Great Britain; and whereas the Government of the United States has contended that the said claims were included in the Treaty; and whereas both Governments adopt for the future the principle that claims against neutrals for remote and indirect losses should not be admitted as resulting from the act of belligerents which such belligerents may have been enabled to commit by reason of a want of due diligence on the part of a neutral in the performance of neutral obligations so far as to declare that this principle will hereafter guide the conduct of both Governments in their relations with each other: now, therefore, in consideration thereof, the President of the United States, by and with the advice and consent of the Senate thereof, consents that he will make no claim on the part of the United States before the Tribunal of Arbitration at Geneva, in respect of the several classes of indirect losses hereinbefore enumerated."

No. 76.

Mr. Fish to General Schenck.

[Telegram.—Extract.]

WASHINGTON, *May* 31, 1872.

As stated in a previous dispatch which you communicated to Her Majesty's Government, unless a treaty be signed and ratified by this Government this day, so as to be transmitted to London by to-morrow's steamer, for ratification by Her Majesty, it will not be possible that it become operative in time to be laid before the Arbitrators at Geneva on 15th June, on which day the existing Treaty requires that the arguments be presented.

Your telegram reached me this morning within thirteen hours of the departure of the last conveyance by which a copy of a treaty can leave here to take the steamer of to-morrow.

It would be impossible for the Senate, within that time, to consider the important change proposed of the form and terms in which, after long deliberation, they have agreed to advise the President to negotiate the proposed Article.

Her Majesty's ministry has already been apprised of this.

To propose a change of language, involving a change of object and of effect, at this late period, is therefore practically to defeat any agreement.

Lord Granville admits that the language of the Article first proposed by Her Majesty's Government might be improved. The President thinks that the same may be said of that now proposed by Lord Granville; it appears to him to leave a large class of very probable cases unprovided for, and he holds that the result of bad faith, or of willful misconduct toward either of these two Governments, will never be the subject of pecuniary compensation.

I have suggested to Sir Edward Thornton that we sign the Article as recommended by the Senate, and thus put it in operation, and allow the arbitration to proceed.

It is not believed that there is any such difference of object between the two Governments in the definition and limitation which each desires to place upon the liability of a neutral, as to prevent an agreement on the language in which to express it, if time be allowed for an exchange of views by some other means than the telegraph.

There is no probability of a practical question on the extent of that liability arising immediately.

This Government is willing at once to enter upon negotiations for the purpose of ascertaining whether language can be employed which shall more clearly express the views which it is believed are entertained by both parties.

FISH.

[From British Blue Book "North America," No. 9, (1872,) p. 33.]

No. 77.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *May* 31, 1872.

SIR: I send you the draught of a Convention for adjourning the period for the presentation of the arguments under the Vth Article of the Treaty of Washington, to be used, however, by you only in case of the new Treaty Article proposed by us not being agreed to, and an adjournment being agreed to, in which case you are authorized to sign it as it is now sent to you.

I am, &c.,

GRANVILLE.

[Inclosure in No. 77.]

Sketch of a Convention.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, deeming it expedient to extend the time assigned in the Vth Article of the Treaty of Washington, of the 8th of May, 1871, for the delivery in duplicate to each of the Arbitrators appointed under the Ist Article of the said Treaty, and to the Agents of the respective parties, of the written or printed argument, showing the points and referring to the evidence upon which each of the said parties respectively relies, in regard to the matters submitted by them for arbitration under the aforesaid Ist Article, they have agreed to conclude a Convention for that purpose, and have accordingly named as their Plenipotentiaries:

That is to say, &c.

ARTICLE I.

The High Contracting Parties agree that the period appointed under the Vth Article of the Treaty of Washington, of May 8, 1871, for the delivery in duplicate to each of the Arbitrators, and to the Agents of the respective High Contracting Parties, of the written or printed argument, showing the points and referring to the evidence upon which each of the said parties respectively relies, in regard to the matters submitted by them for arbitration under the Ist Article of the aforesaid Treaty, shall not be insisted on, but that it shall be open to the High Contracting Parties, within the period of three months from the date of the exchange of the ratifications of the present Convention, jointly to notify, through their respective Agents to the Arbitrators, the day on which those Agents will be prepared to deliver at Geneva the said arguments to the Arbitrators.

ARTICLE II.

A copy of this Convention shall be forthwith communicated by the Agents of the High Contracting Parties to the several Arbitrators.

ARTICLE III.

The present Convention shall be ratified, and the ratifications exchanged at London, within weeks from the date thereof.

[From British Blue Book "North America," No. 9, (1872,) p. 46.]

No. 78.

Sir E. Thornton to Earl Granville.

[Extract.]

WASHINGTON, *May* 31, 1872. (Received June 11.)

I received a visit from Mr. Fish early in the morning of the 29th instant, when he read to me a telegram he had received from General Schenck, a copy of which was forwarded in your telegram of the 28th instant.

Mr. Fish said that he could not entirely understand the ground of your Lordship's objections to the supplementary Article as recommended by the Senate. He went on to say, that as the session was now so near its close, and as there was an immense amount of business still to be got through, he believed that it would be quite impossible to obtain an Executive Session for the purpose of taking into consideration even so short a Treaty as would be necessary to agree upon an adjournment of the meeting of the Tribunal of Arbitration, more particularly as in transmitting such a Treaty to the Senate for its sanction, it would be necessary to state that the supplementary Article recently recommended by that body had been rejected by Her Majesty's Government, and to accompany that statement by the confidential telegrams which had passed between General Schenck and himself upon the subject.

Mr. Fish added, that even if such a Treaty of adjournment were signed and ratified, there would still be the same difficulty about making a convention as to the course which was to be pursued with regard to indirect claims. It could not be done immediately, and it would be a matter of great difficulty to convoke the Senate in Extraordinary Session during the summer for the purpose of ratifying such a convention. It could not, therefore, be submitted to the Senate till it met in December next, and it could not be foreseen when it might be taken into consideration; and it would, therefore, be very difficult to decide until what date the meeting of the Tribunal should be postponed.

It is at present difficult to prevent members of Congress from availing themselves of any opportunity to interrupt the most necessary and pressing business, and to make violent party speeches in both Houses.

No. 79.

General Schenck to Mr. Fish.

No. 246.] LEGATION OF THE UNITED STATES,
London, June 1, 1872. (Received June 13.)

SIR: I transmit herewith a copy of Lord Granville's note to me of the 30th May, communicating, on the part of Her Majesty's Government, another amended draught Article, received at 2.45 yesterday morning, and of which, both note and amended Article, I sent you the full text by telegraph early the same morning.

I transmit also a copy of my note to Lord Granville, acknowledging the receipt of the above-mentioned communication, and informing him that I would immediately telegraph his note and the new draught to you; and a copy of my note to him sent at midnight last night, conveying to him a copy of your telegram of yesterday received at that hour.

It is now afternoon, and I have as yet heard nothing from his Lordship in answer, or in relation, to that telegram.

I have the honor to be, sir, your obedient servant,
ROBT. C. SCHENCK.

[Inclosure 1 in No. 79.]

General Schenck to Earl Granville.

58 GREAT CUMBERLAND PLACE, HYDE PARK, W.,
Friday, 2.45 *a. m., May* 31, 1872.

MY LORD: I have just been called from my bed to receive your note, dated the 30th, putting me in possession of another form of a draught Article which Her Majesty's Government would be prepared to accept if adopted by the Government of the United States.

I will hasten to communicate your note and the draught to Mr. Fish by telegraph, so that they may reach Washington at the earliest possible hour for consideration there.

I am, my Lord, with the highest consideration, your Lordship's most obedient servant.
ROBT. C. SCHENCK.

[Inclosure 2 in No. 79.]

General Schenck to Earl Granville.

58 GREAT CUMBERLAND PLACE,
May 31, 1872, *midnight.*

MY LORD: I have just received from Mr. Fish a telegraphic dispatch, of which I hasten to communicate to you the inclosed copy.

I have the honor to be, my Lord, with the highest consideration, your Lordship's most obedient servant,
ROBT. C. SCHENCK.

No. 80.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *June* 1, 1872.

The fifth Article of the Treaty requires the written arguments to be presented by the 15th June.

The adjournment of the Tribunal without amending that Article would, as we are advised, practically amount to a discontinuance, and hat Article can be amended only by a new treaty.

The opinion attributed to me regarding the Senate Article is very incorrectly represented.

FISH.

No. 81.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 1, 1872. (Received 3.30 p. m.)

Your telegram of yesterday was received at midnight, and immediately communicated to Lord Granville, who has just sent me an answer as follows:

[*Earl Granville to General Schenck.*]

SIR: In reply to the communication which I received from you this morning, I beg to inform you that Her Majesty's Government hold that by the Article adopted by the Senate, cases of bad faith and willful misconduct are brought within the scope of the proposed agreement, which deals with pecuniary compensation. It appears to be the view of the Government of the United States that such cases are not a fit subject of pecuniary compensation, and I am informed by Sir Edward Thornton that Mr. Fish is of opinion that the Article adopted by the Senate is capable of improvement. The President thinks that the Article last proposed by Her Majesty's Government is also capable of improvement. The American Government state that "it is not believed that there is any such difference of object between the two Governments in the definition and limitation which each desires to place upon the liability of a neutral as to prevent an agreement on the language in which to express it if time be allowed for the exchange of views by some other means than the telegraph." The British Government must decline to sign a treaty which is not in conformity with their views, and which does not express the principles which the American Government believes to be entertained by both parties to the negotiation, and which, immediately after being signed, would become the subject of negotiation with a view to its alteration. In this position they repeat their readiness to extend the time allowed for the Arbitrators to meet at Geneva, and they have, as you are aware, provided Sir Edward Thornton with full powers to sign a treaty for this purpose, or they are willing to concur in a joint application to the Tribunal of Arbitration at once to adjourn the proceedings of the Arbitration, which they are advised it is within the competence of the Arbitrators to do upon such an application without a fresh treaty.

SCHENCK.

No. 82.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *June* 2, 1872.

Although by a literal construction of the Senate Article, cases of bad faith or willful misconduct may be held to be within its scope, it is inconceivable that such cases can ever be the subject of diplomatic correspondence with a view to pecuniary compensation between two Powers such as those now concerned.

FISH.

No. 83.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 2, 1872. (Received 1.20 o'clock.)

Your telegram of yesterday just received. I will communicate it to Lord Granville to-morrow. Must I say it is final? They hold here that after the Arbitrators have received the arguments from the Agents on the 15th they may adjourn for a time, and would doubtless do so on joint request of the two Governments; that the power to adjourn is incident to the character of the Tribunal, reference being had only to the seventh Article of the Treaty, which requires a decision to be made, if possible, in three months. In this view I certainly concur, but have not expressed my opinion to any one. If the ministry were to enter into any such arrangement, putting in their argument and trusting to the chance of negotiating a supplementary Article afterwards, they must expect denunciation in Parliament; but that would be their concern, not ours. I heard from Davis last week that our argument would be ready by the 15th, and Lord Granville told me theirs would be.

SCHENCK.

No. 84.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *June* 2, 1872.

Confidential. We concur in the opinion that the Arbitrators have the power to adjourn either on their own motion or on the motion of either party.

If the arguments be put in on both sides on 15th, and Great Britain move for an adjournment, this Government will concur.

FISH.

No. 85.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 3, 1872. (Received 11.25 p. m.)

I found this morning I had partly misunderstood Lord Granville.

Her Majesty's Government are of opinion that the Arbitrators must meet on the 15th, but that it is not necessary for the Agents to present the arguments at that time. Such delivery of arguments they think may, by joint agreement, be postponed. This conclusion was under advice of Sir Roundell Palmer. I asked Lord Granville if he would consider this point again when in Cabinet to-day, and tell me how they thought the parties could proceed under the fifth Article without such delivery of arguments. It seemed to me that the Arbitrators need not necessarily assemble then any more than they did to receive the Counter Cases. Perhaps, however, the parties might, by mutual agreement, waive the presentation of arguments at that date, being a matter which related not to the Arbitrators, but to a duty to be performed by their own Agents.

He has just sent me the following communication:

[*Earl Granville to General Schenck.*]

SIR: In reply to the question which you put to me this morning, I have to state to you that Her Majesty's Government consider that the Arbitrators must no doubt meet on the 15th of June, but the fifth Article of the Treaty, though it contemplates the delivery of written arguments on that day, does not make the further prosecution of the arbitration impossible, if on that day *neither party* presents any written argument. The Arbitrators have full power to adjourn, and they have also full power to call, after the 15th, for any further statements or arguments, written or oral, from time to time as they may think fit. If, therefore, both parties agree not to present any argument till a later day than the 15th, requesting the Arbitrators to adjourn, and if the Arbitrators should, on any day to which they may have adjourned, accept the argument which both parties may then wish to tender to them, this will be quite within their power.

SCHENCK.

No. 86.

Mr. Fish to General Schenck.

No. 216.] DEPARTMENT OF STATE,
Washington, June 3, 1872.

SIR: Your dispatch No. 233 of the 18th ultimo, inclosing copy of supplement to the London Gazette of the day previous, has been received. This copy of the Gazette brings to the Department the first notice it has had of Earl Granville's note of the 13th ultimo, which probably appeared in print, submitted to the British public, long before it reached Sir Edward Thornton, to whom it purports to be addressed.

The avowed purpose of Earl Granville's note is to notify Sir Edward Thornton that Her Majesty's Government have refrained from continuing "an argumentative discussion with the Government of the United States, upon the scope and intention of the Articles in the Treaty of Washington, relating to the Arbitration on the 'Alabama claims;'" and to put him in possession of the views of that Government, with reference

SCHENCK.

to some passages which occur in my note to you of the 16th of April. Of course it will not be assumed that the object of its publication in Great Britain, in advance of its possible receipt by the gentleman for whose instruction it was written, had any connection with the influencing of public opinion in Europe, or near the expected scene of the Geneva Tribunal.

It never was the desire of this Government to open, much less to prolong, discussion with her Majesty's Government upon the scope and intention of the Articles in the Treaty of Washington relating to the Arbitration on the Alabama claims. The Government of the United States hoped, as it had reason to believe, that before the august Tribunal, appointed in accordance with the terms of the Treaty of Washington to "examine and decide" upon the matters in dispute between the United States and Great Britain, and designated as the "Alabama claims," the Treaty would be its own interpreter. Resting upon this most reasonable conviction, it has been the earnest wish of the President (a wish often expressed in the correspondence of this Department on the subject) to remit all discussion as to the scope and meaning of the Treaty to that Tribunal. Had this feeling been reciprocated by Her Majesty's Government, the discussion which has occurred between the two Governments upon the true meaning of the Treaty might have been in a great measure avoided. Upon the present point of contention between this Government and that of Great Britain, namely, whether the claims for "national losses" popularly denominated "indirect damages," are by the terms of the Treaty fairly within the province for the consideration and decision of the Geneva Tribunal, the United States it is believed will lose nothing by the fullest discussion of the question.

In my note to you of the 16th of April, I had occasion to say, "It is difficult to reconcile the elaborate line of argument put forward by Earl Granville to show a waiver of claims for indirect losses, with the idea that at the outset of the negotiations Her Majesty's Government did not consider the matter of public or national injuries as the basis of an outstanding claim against Great Britain, on the part of the United States." His Lordship's instruction of the 13th ultimo, now before me, does not serve to lessen, much less to remove, the difficulty thus suggested. In this instruction Earl Granville, with great skill and ingenuity, recapitulates the previous arguments on the question, and arranges, with infinite care, the facts upon which he desires that the propositions advanced by Her Majesty's Government should rest. Passing over a certain tone of criticism, which may with propriety be ascribed to the pressure of public business upon his Lordship at the present moment, I proceed to notice some statements in his Lordship's note, from which he draws inferences in my opinion wholly unwarranted by the premises. I do this that you may be put in possession, not only of all new facts on the subject, but also of the views of this Government, in order that you may be able to make such use of them in your future intercourse on this subject with Her Majesty's Government as the occasion may demand.

Speaking of the allusion in my instruction of the 16th of April to Earl Russell's dispatch of March 27, 1863, to Lord Lyons, Earl Granville says: "Mr. Fish omits the words 'of which the Confederate loan is an additional proof;' which, taken with the context, shows that Mr. Adams was then speaking not of the case of the 'Alabama,' but of the assistance in money and materials, which he considered was improperly rendered to the Confederate States by blockade-running and the cotton loan." It is true that those words were omitted; there was no reason why they should have been quoted; they refer to some other and additional proof of the conspiracy which Mr. Adams was pointing out, as tending to bring on a war with a view to aid the Confederate cause. My object was not to fortify what Mr. Adams had said, but to show that he had notified to Great Britain that her conduct was aiding the Confederate cause; with or without the omitted words the extract establishes the notice. The cumulative evidence which they afford of the conspiracy that Mr. Adams notified to Lord Russell is unimportant to the notice given. The suggestion of the omission seems to be an ingenious avoidance of a material issue in the case by raising another of no possible significance.

But in this connection it is difficult to imagine by what process of divination Lord Granville assumes that Mr. Adams was speaking with reference to blockade-running, which is not even alluded to in Lord Russell's note, and seems to be an interpolation wholly unsustained by the narrative of Lord Russell, whose general amiability of character and friendship for the United States have never yet subjected him to the suspicion of withholding anything that might be used to their disadvantage or discredit. A perusal of Lord Russell's note (which is appended hereto, copied from the British Blue Book, North America, No. 1, 1864, p. 2) shows the main object of the interview which Mr. Adams had sought with Lord Russell to have been the presentation of a dispatch of Mr. Seward, complaining of the fitting out and the depredations of the "Alabama" and the "Oreto," and other cruisers, to which the conversation was mainly confined. These things Mr. Adams thought made manifest a conspiracy, of which the "Confederate loan was an additional proof," and he thus brought the existence of a conspiracy with a view to prolonging the war to the notice of the British Government.

I appeal to Lord Russell's note to determine whether, as I supposed, and as Lord Granville denies, Mr. Adams referred to the "Alabama" as among the causes tending to produce the exasperation which might lead to a war "with the view to aid the Confederate cause," and whether, as Lord Granville asserts, and I doubt, Mr. Adams was speaking of "blockade-running."

If (as I think that Lord Russell's note establishes) the "Alabama" and other cruisers were the subject of the conversation, there was no occasion on my part to adduce the Confederate loan as "additional proof." The fact that it is mentioned as "additional proof" shows that it was not the main proof of which Mr. Adams had been speaking. Lord Granville has unhappily misconceived the subject which formed the leading topic of the interview between Mr. Adams and Lord Russell.

The depredations of the cruisers afloat, the continued building of ships for the Confederates in British ports, the manning those ships with British sailors, and the unconcealed desire on the part of the conspirators for the success of the Confederates, and for a monopoly of the trade of the Southern States: this, in the estimation of Mr. Adams, was the evidence of the existence of the conspiracy of which the Confederate loan was incidentally referred to as "additional proof."

Earl Granville mentions that the dispatch of the 14th of February, 1866, and that of 2d May, 1867, both from Mr. Seward to Mr. Adams, were neither of them communicated to Her Majesty's Government. If his Lordship means that these notes were not officially communicated to his Government *at the time of their date*, he is unquestionably right, but then he controverts what was not alleged. I had said "the official correspondence of this Government which was published and is within the knowledge of Her Majesty's Government;" this Lord Granville does not deny, and this I re-assert. A volume containing the notes referred to was placed in the possession of the British Joint Commissioners, and was again formally delivered to the Agent of Her Majesty, at Geneva, in December last. Lord Granville himself more than once quotes from it, thus establishing what I have asserted, that the contents of that volume were within the knowledge of Her Majesty's Government.

Lord Granville refers to a dispatch to Mr. Seward, dated 17th February, 1869, in which Mr. Reverdy Johnson reviews the objections made in the United States to the Convention negotiated by him. His Lordship makes a long extract from this dispatch, referring to "page 767" as that on which it appears. The two dispatches which he had intimated had not been communicated to Her Majesty's Government, appear in the same volume from which he thus quotes, the one at page 628, the other at page 673.

At the conclusion of this extract his Lordship proceeds: "If Mr. Johnson was mistaken in the view thus decidedly expressed, it might be expected that some notice would have been taken of so important an error."

When it is remembered that the Convention of which Mr. Johnson was then speaking, and in the negotiation of which he had acted so prominent a part, was rejected by the Senate of the United States, a branch of the treaty-making power of this Government, it can scarcely be said, even with plausibility, that Mr. Johnson's expression of his own views, in the dispatch from which Earl Granville quotes so liberally, was allowed to pass unnoticed by this Government. The vote of the Senate is understood to have shown only one member who, from whatever cause, approved Mr. Reverdy Johnson's Treaty. The inference may be fairly drawn that no other Senator shared Mr. Johnson's views.

The opinion obtained somewhat extensively, in this country at least, that the Senate of the United States did take a somewhat decided notice of the Treaty, and that in rejecting the Treaty itself, as the Senate did, it swept away all the reasoning and argument in its defense, which thenceforth needed no further notice. But however this may be, the dispatch which Earl Granville quotes establishes the fact that, at its date, the claims which Her Majesty's Government employs Mr. Johnson's dispatch to controvert had been advanced. Historically, therefore, they were then known. The date of this dispatch is more that two years before the meeting of the Joint High Commission. The citation of this dispatch by Her Majesty's Government would seem to bring to it a knowledge of the existence of these claims anterior to the meeting of the Joint High Commission, although we have elsewhere been told that their presentation to that Commission was a surprise.

Soon after the reception of this dispatch of Mr. Johnson's by his Government, he ceased to be its representative at the Court of St. James. Those who know Mr. Johnson's social and genial qualities will not be surprised to find that Lord Granville, not content with citing his official dispatch in explanation of the conversation, proceeds to cite in defense of the British side of the question, a professional letter of Mr. Johnson, written several months after his retirement from public life.

In an instruction from this Department to Mr. Motley, (Mr. Johnson's successor as the representative of this Government,) dated May 15, 1869, informing him of the then recent action of the Senate of the United States on what was familiarly known as the "Johnson-Clarendon Treaty," the views of this Government are thus expressed in relation to the claims of the United States against the British Government: "Upon one point the President and the Senate and the overwhelming mass of the people are convinced, namely, that the Convention, from its character and terms, or from the time of its negotiation, or from the circumstances attending its negotiation, would not have removed the sense of existing grievance, would not have afforded real, substantial satisfaction to the people, would not have proved a hearty, cordial settlement of pending questions, but would have left a feeling of dissatisfaction, inconsistent with the relations which the President desires to have firmly established between two great nations of common origin, common language, common literature, common interests and objects in the advancement of the civilization of the age."

The action of the United States Senate, as above shown, and the expression just quoted from my dispatch of May 15, 1869, to Mr. Motley, furnish a correct history of the attitude of the Government of the United States in relation to the whole subject, at a time contemporaneous with the expression of Mr. Johnson upon which Earl Granville places so much reliance. The support which Her Majesty's Government can derive from Mr. Johnson's dispatch seems to me very slender.

To show that the United States continued to maintain this position in relation to the claims, it may not be out of place to call your attention to the language of my instruction to Mr. Motley of September 25, 1869, in which occurs the following expression of the views then entertained by this Government: "The President is not yet prepared to pronounce on the question of indemnities which he thinks due by Great Britain to individual citizens of the United States, for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain. Nor is he now prepared to speak of the reparation which he thinks due by the British Government for the larger account of the vast national injuries it has inflicted on the United States. Nor does he attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel cruisers, or by the supply of ships, arms, and munitions of war to the Confederates, or otherwise in whatever manner. * * * All these are subjects of future consideration, which, when the time for action shall arrive, the President will consider," &c. It seems strange that this language should have failed to make evident the existence of a serious complaint on the part of this Government on account of the national losses and injuries consequent upon the increased rates of insurance, the transfer of the merchant marine of the United States to Great Britain, and the increased expenditure caused by the prolongation of the war for the suppression of the rebellion.

That the idea of a claim on the part of the United States for indirect damages for national losses was even then neither new nor obscure in the minds of eminent British statesmen, I need but refer again to the opinions expressed by Lord Cairns and Professor Bernard, quoted in my note of the 16th of April. I see no reason to qualify what I then found occasion to say: "At every stage, therefore, of the proceedings, from November, 1862, when Mr. Adams 'solicited redress for the national injuries sustained,' to the date of the Treaty, this Government has kept before that of Great Britain her assertion of the liability of the latter for what are now termed the indirect injuries." Earl Granville surely cannot dismiss the uninterrupted and consistent assertion of the claims of the United States against Great Britain for national losses suffered by the former, in consequence of a disregard of national obligations by the latter.

It remains to notice one other passage in the dispatch of Earl Granville, alluding to my reference, in the note of the 16th of April, to the work of Professor Bernard. His Lordship says: "Still less can they (Her Majesty's Government) admit that because Mr. Bernard, in the 14th chapter of his work, gave certain extracts from Mr. Fish's dispatch, under the head of 'Alabama claims,' that dispatch became the standard by which the claims known as Alabama claims were to be measured."

Here again his Lordship repels what was not proposed. Mr. Bernard was quoted to show that Her Majesty's Government entered upon the negotiation of the Alabama question with a knowledge of the existence of the claims of the United States for indirect losses. There was no suggestion that the dispatch which Mr. Bernard quoted was to be a standard of measure, but that the fact of quoting by Mr. Bernard showed knowledge on his part of the existence and nature of claims which elsewhere was denied. His Lordship then proceeds: "It happens, moreover, that in the extracts given by Mr. Bernard, in the chapter to which Mr. Fish refers, the three passages cited by Mr. Fish in his present dispatch as relating to indirect injuries and national losses are omitted."

I am bound to suppose that the repeated apparent denial of what was not asserted is the result or consequence of the haste in which his Lordship's note was given to the press. In my dispatch to you I had not said that the passages cited by me were among the extracts given by Mr. Bernard "in the chapter" to which I referred. My language was, "*in this work* he summarizes an instruction," &c. I have, therefore, to repeat what I said, namely, that the passages cited by me appear in Professor Bernard's work; and I must direct your attention to the fact that, while Lord Granville denies (what was not asserted) that these passages do not appear in a certain chapter, he does not deny (whatever may be the impression casually produced by his language) what I asserted, namely, that the passages do appear in Professor Bernard's work. I refer to pages 492 and 493, where they will be found.

Referring to a former dispatch of mine, Lord Granville thinks that it is apparent that the "vast national injuries" presented in it are ascribed to other causes than the acts committed by the Confederate cruisers, and among other extracts from the dispatches he quotes me as saying, "nor does he (the President) attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel cruisers, or by the supply of ships, arms, and munitions of war to the Confederates, or otherwise in whatever manner." With regard to the interview of Mr. Adams with Lord Russell, in March, 1863, the statement by the latter that the former had referred to the Confederate loan as "additional proof" of what Mr. Adams had alleged to exist, has been advanced to prove that Mr. Adams was not speaking of the subject which he sought the interview to discuss, but of something of which neither he nor Lord Russell made any mention. Here the argument appears to be of the same nature, that because some "additional" causes of complaint other than those put forward before the Joint High Commission, and before the Arbitrators at Geneva, have been advanced in some correspondence on the part of this Government, that a certain class of claims are not included under the head of "Alabama claims."

Lord Granville says, "Mr. Fish gives as a reason for no claims for national losses having been 'defined' or 'formulated,' that Lord Russell objected in July, 1863, to any claims being put forward."

A reference to my dispatch to you of the 16th of April last shows me as giving a different reason. I said, "During the war these claims were continually arising and increasing, and could not then be defined, and the time for formulating them would not arise until a willingness to enter upon their consideration arose." Lord Russell's objections were mentioned, it is true, *in addition* to the reason above quoted, but although "additional," they are not therefore exclusive.

The communications which the British High Commissioners may have made to their Government, either pending the negotiation or since, can scarcely be urged with seriousness upon this Government for acceptance in the construction of the Treaty. One of those gentlemen is reported as saying recently "that we, the (British) Commissioners, were distinctly responsible for having represented to the Government that we (they) understood a promise to be given that these claims were not to be put forward, and were not to be submitted to arbitration." He does not say by whom, on what occasion, or in what manner, such promise was made. He involves all his colleagues in the representation made to their Government, that such promise had been made. But this seeking *aliunde*, outside of the Treaty and of the Protocol, to establish a meaning or to explain its terms, has had the effect, which the honorable baronet who made the declaration anticipated, to raise "a personal question," and I cannot allow this reference made by Lord Granville to the information furnished to Her Majesty's Government by Her High Commissioners to pass without alluding to the representation which Sir Stafford Northcote (one of those Commissioners) says that the commissioners are responsible for having made to their Government.

In justice to myself and my colleagues on the American side of the Commission, I must take this occasion (the first that has presented itself since I have seen the speech of Sir Stafford Northcote) to say that no such promise as he states that the British Commissioners represented to their Government, as having been understood by them to be made by the American Commissioners, was in fact ever made. The official communications between the American and the British Commissioners (as you are aware) were all made by or to me as the first-named of the American Commissioners.

I never made and never heard of any such promise, or of anything resembling a promise on the subject referred to. None was ever made by me, formally or informally, officially or unofficially; and I feel entire confidence in making the assertion that none of my colleagues ever made any promise or any declaration or statement approaching to a promise on the subject. What may have been the understanding of Sir Stafford Northcote, or of his colleagues, I cannot undertake to say, but that the American Commissioners gave him or them any grounds to understand that such a promise was given, as he says they represented to their Government as having been made, I am bound most respectfully but most emphatically to deny. I cannot conceive from what he has imagined it, as the only direct allusion to the three classes of claims (called the "indirect claims") was that made on the part of the American Commissioners on the 8th day of March, and is set forth in the 36th Protocol in the words in which it was made.

The British Government has, in the correspondence which has recently taken place, endeavored to construe the withholding of an estimate of those "indirect claims" in connection with a proposition on behalf of this Government, which was declined by the British Commissioners, into their waiver. I have already discussed that question, and shall not here again enter upon its refutation. The Protocols and the statement approved by the Joint Commission furnish the substantial part of what passed on that occasion. I am at a loss to conceive what representation, outside of the statement made in the 36th Protocol, Sir Stafford Northcote can have made to his Government. He refers to some "personal question," something which, until the time of his address, he and his colleagues had been under official restraint from discussing, but the Protocols and the statement to which I have referred had been before the public both in Great Britain and in the United States for nearly a year before his declaration. It is only within a day or two that the journals containing his address have reached me. I have this day addressed a letter to yourself and to each of our colleagues on the Commission, calling attention to Sir Stafford's statement, and in due time may make public the correspondence.

Returning to Lord Granville's dispatch in the supplement to the London Gazette, I find little else that has not already been discussed or that requires further reply.

It may, however, be noticed that the remote or consequential nature of claims does not appear to have been a serious objection to the presentation of such claims on the part of the British Government against the United States. Lord Granville, in the dispatch in the supplement, recalls the fact that the British Commissioners repeatedly put forward the Fenian raid claims, but not until the 3d of May, (after the American Commissioners had declined to treat on them,) did the British Commissioners admit that a portion of the claims were of a constructive and inferential character, having thus persistently, for nearly two months, kept before the Commissioners those constructive claims. It is not necessary now to consider the relative admissibility of "constructive" and of "indirect" claims, as the ground for pecuniary compensation against a Government, under the principles of International Law.

His Lordship again refers to the case presented by the British Government to the Claims Commission, sitting in this city, for the Confederate cotton loan. While questioning the accuracy of my statement, that "the United States calmly submitted to the Commission the decision of its jurisdiction," he proceeds to establish its accuracy by stating the motion made by the Counsel of this Government to dismiss the claim.

If the British Government will follow this example, and move the Tribunal at Geneva to dismiss the claims which it thinks are not included in the submission of the Treaty, a similar result may be obtained, and the benefits of the Treaty and of the principles of peaceful arbitration of grave differences between nations may be established.

I am, sir, your obedient servant,

HAMILTON FISH.

[Inclosure in No. 86.]

Earl Russell to Lord Lyons.

FOREIGN OFFICE, *March* 27, 1863.

MY LORD: Mr. Adams having asked for an interview, I had a long conversation with him yesterday at the Foreign Office. He read me a dispatch of Mr. Seward on the subject of the Alabama and Oreto. In this dispatch, which was not unfriendly in its tone, Mr. Seward complains of the depredations on American commerce committed by vessels fitted out in British ports, and manned, for the most part, by British sailors. He alludes to the strong feeling excited in the United States by the destruction of her trading vessels and their cargoes. He repeats the complaint common in America, that England is at war with the United States, while the United States were not at war with England. He expresses his hope that Great Britain, in execution of her own laws, will put an end to the fitting out of such vessels to prey on the commerce of a friendly nation. I said that the phrase that England was at war with America, but America was not at war with England, was rather a figure of rhetoric than a true description of facts. That the facts were that two vessels, the Oreto and the Alabama, had eluded the operation of the Foreign-Enlistment Act, and had, against the will and purpose of the British Government, made war upon American commerce in the American seas. That the fitting out of the Alabama, the operation against which the Foreign-Enlistment Act was especially directed, was carried on in Portuguese waters at a great distance from any British port. That the most stringent orders had been given long ago to watch the proceedings of those who might be suspected of fitting out vessels of war for Confederate purposes. That if there were six vessels, as it was alleged, fitting out in British ports for such purposes, let evidence be forthcoming, and the Government would not hesitate to stop the vessels, and to bring the offenders before a court of justice. That Mr. Adams was no doubt aware that the Government must proceed according to the regular process of law and upon sworn testimony.

Mr. Adams, on the other hand, dwelt on the novelty and enormity of this species of warfare. He said that if a belligerent could fit out in the ports of a neutral swift armed vessels to prey upon the commerce of its adversary, the commerce of that belligerent must be destroyed, and a new and terrible element of warfare would be introduced. He was sure that England would not suffer such conduct on the part of France, nor France on the part of England. He should be sorry to see letters of marque issued by the President; but there might be no better resource than such a measure.

I said I would at once suggest a better measure. Mr. Seward had said to Lord Lyons that the crews of privateers had this advantage—that they reaped the whole benefit of the prizes they took, whereas the crews of men-of-war were entitled to only half the value of the prizes they took. Let the President, I said, offer a higher reward for the capture of the Alabama and Oreto to the crews of men-of-war than even the entire value of those vessels. Let him offer double their value as a gratuity, and thus confine his action to officers and men of the United States Navy, over whom he could keep a control, and who were amenable to the laws which govern an honorable profession. But what could Mr. Adams ask of the British Government? What was his proposal?

Mr. Adams said there was one thing which might be easily done. It was supposed the British Government were indifferent to these notorious violations of their own laws. Let them declare their condemnation of all such infractions of law.

With respect to the law itself, Mr. Adams said either it was sufficient for the purposes of neutrality, and then let the British Government enforce it, or it was insufficient, and then let the British Government apply to Parliament to amend it.

I said that the Cabinet were of opinion that the law was sufficient, but that legal evidence could not always be procured; that the British Government had done everything in its power to execute the law; but I admitted that the cases of the Alabama and Oreto were a scandal, and in some degree a reproach to our laws. Still, I said it was my belief that if all the assistance given to the Federals by British subjects and British munitions of war were weighed against similar aid given to the Confederates, the balance would be greatly in favor of the Federals.

Mr. Adams totally denied this proposition. But above all, he said, there is a manifest conspiracy in this country, of which the Confederate loan is an additional proof, to produce a state of exasperation in America, and thus bring on a war with Great Britain, with a view to aid the Confederate cause, and secure a monopoly of the trade of the Southern States, whose independence these conspirators hoped to establish by these illegal and unjust measures. He had worked to the best of his power for peace, but it had become a most difficult task.

Mr. Adams fully deserves the character of having always labored for peace between our two nations, nor, I trust, will his efforts and those of the two Governments fail of success.

I am, &c.,

RUSSELL.

No. 87.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *June* 4, 1872.

The Government of the United States differs entirely from the opinion expressed in Lord Granville's note to you, that it is not necessary for the Agents to present the arguments of the respective Governments on the 15th.

The fifth Article of the Treaty requires that the arguments be presented within a specified time, which time will expire on the 15th.

Being a treaty requirement, the Executive Department of the Government cannot depart from its obligations, and has not the power to consent to a change of its terms.

If an adjournment is contemplated by Great Britain, with the idea of future negotiation, it is right that, with reference to the Senate Article, it should be understood that this Government cannot negotiate on a proposition which involves the idea that it may be guilty of intentional ill faith, or of willful violation of its international duties, or that it regards such acts on the part of another Power the subject of compensation by the payment of damages in money.

FISH.

[From British Blue Book "North America," No. 9, (1872,) p. 37.]

No. 88.

Memorandum read by Lord Granville in the House of Lords.

I have spoken to General Schenck as to the annoyance which has been felt in and out of Parliament at the publication in the United States of the papers submitted to the Senate in their secret session.

I told him that, for obvious reasons, I much regretted it, but that I believed that it was no act of the Government of the United States.

Sir E. Thornton had informed me that these papers had been surreptitiously obtained.

General Schenck told me that he believed that the Government of the United States had not, through any of its Departments—the President, the Senate, or the Secretary of State—been a party to the publication of that correspondence. It appeared to have got out surreptitiously through the enterprise (if it may be called by so innocent a name) of the newspapers.

I have also spoken to General Schenck, and alluded to the unfavorable impression which has been created by certain passages in that correspondence wherein Mr. Fish declares the determination of the President to maintain the indirect claims before the Tribunal of Geneva. I told General Schenck that, from the various conversations which I have held with him, and from his written communications, I have been led to believe that the position of the United States was this:

The President held that the indirect claims were admissible under the Treaty; that the Treaty was made and ratified in that sense; and that, therefore, although he might by interchange of notes or otherwise, agree not to press for compensation for those claims, yet as being within the scope of the Treaty, it was not in his power to withdraw them—that could only be done by the exercise of the full Treaty-making power, including the concurrence of the Senate; that it was for this purpose that the President preferred, instead of an interchange of notes, that Her Majesty's Government should adopt a supplementary Article, which for some sufficient consideration might enable the Government of the United States to declare that they would make no claim for such losses, and that the Arbitrators would thereby be prevented from entertaining these indirect claims.

General Schenck informed me that he agreed with me in my construction of what had passed, and I have submitted to him this report of our conversation.

I read this in the House of Lords last night.

FOREIGN OFFICE, *June* 4, 1872.

No. 89.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 5, 1872. (Received at 10.45 a. m.)

Opposition members in Parliament have strange and unworthy suspicions and fears that the last clause of the Article, although in the language of their own Government, is not explicit enough to prevent the indirect claims from being again brought forward. Might we not offer that if this Government will accept the Senate language for the expression of the rule, we will agree to the last clause of their form, as communicated to you in my telegram of the 31st May, adding thereto the words "but will thereupon abandon those several enumerated claims as a cause of difference between the two countries to be considered by the Arbitrators in making their award."

SCHENCK.

No. 90.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *June* 5, 1872.

We cannot agree to the suggestion in your telegram of this date. This Government deals with the British Government, and not with opposition members of Parliament. If that Government adopts the unworthy suspicions and fears referred to in your telegram, and advances them as reasons for modifying the proposed Article, or suggests that this Government will not in good faith act upon the agreement contained therein, all further negotiations must cease at once.

If it does not adopt or entertain those suspicions, there is no reason for proposing to alter the language which was proposed by itself, has been accepted by us, and which is sufficiently explicit.

You may say that this Government regards the new rule contained in the proposed Article as the consideration, and will accept it as a final settlement of the three classes of the indirect claims put forth in our Case, to which they objected.

It is useless to expect that any change can be made in the Article as agreed to by the Senate. A treaty in the words which the Senate had agreed upon could be ratified by that body without debate and in a few minutes. Any change, however immaterial, would involve discussion and debate, and in the crowded state of their business would inevitably lead to the defeat of the Treaty.

We think, also, that this Government has made a large concession for the sake of maintaining the important principles involved in the Treaty. It can make no more.

FISH.

No. 91.

General Schenck to Mr. Fish.

[Telegram.—Extract.]

LONDON, *June* 6, 1872. (Received 5 p. m.)

Your telegram of yesterday received this morning.

* * * * * * *

You will do me the justice to believe I have had no exchange of views with anybody here but the Government, through the proper channel. I must also do justice to them; they have not adopted or sympathized with the fears and suspicions of others in regard to the last clause of proposed Article, but defended it as sufficient. I, of course, would have resented any intimation from them that my Government could possibly act in bad faith.

* * * * * * *

I knew your earnest desire to save the Treaty. I knew that, for the consideration expressed in the rule as amended by the Senate, the Government of the United States intended to abandon altogether the three classes of indirect claims, and although I knew the difficulty of opening the main question in the Senate, I thought they might at once agree to show their friendly and sincere purpose by expressing that intention, even more distinctly than had been asked or needed, if by so doing their own expression of the rule could be secured. Late last night, I received from Lord Granville, after a long Cabinet session, three notes, which I send, but to which I have not replied. I will see him immediately, and communicate your views as to the uselessness of expecting change in the Senate Article, and will probably telegraph you again to-day.

The first note is as follows:

[*Earl Granville to General Schenck.*]

SIR: I laid before the Cabinet the telegraphic message from Mr. Fish, which you communicated to me on the 3d instant. That message is only in answer to a portion of the objections raised by Her Majesty's Government to the alterations in the draught Article proposed by the Senate, and does not notice the other points to which I called your attention in my letter of the 28th ultimo, and which were intended to show that the effect of those alterations is to transfer the application of the adjectives "indirect" and "remote" from one subject with reference to which they have been used in the recent correspondence, viz, claims made as resulting "*from the acts committed*" by certain vessels, to a different subject, viz, those made as resulting from "*the failure to observe neutral obligations.*" It is evident that a loss which is direct and immediate with reference to the former subject may be indirect and remote with reference to the latter, and this appears to Her Majesty's Government to be actually the case with respect to the claims which it is assumed the Government of the United States still intend to make before the Arbitrators.

The Government of the United States must see that it is impossible for Her Majesty's Government to authorize Her Majesty's Minister at Washington to sign a treaty, the words of which appear to Her Majesty's Government to say one thing upon a mere understanding to the contrary effect.

The second note is as follows:

[*Earl Granville to General Schenck.*]

SIR: There is a difference of opinion between the Government of the United States and Her Majesty's Government as to the necessity of presenting the written or printed arguments on the 15th of June. I beg to suggest to you that the fifth Article is directory; it speaks of something which it shall be the duty of the Agents of the two Governments to do within a certain time; it does not say that the Treaty is to lapse if this duty is neglected or not performed by the Agents or Agent of both Governments, or of either of them. It would hardly be suggested that the Treaty would lapse if one only of the two Agents omitted to lodge a written or printed argument, such as this Article contemplates, yet there is no more reason for saying that such a written or printed argument to be then delivered is a *sine qua non* of the Treaty if both Agents omit it than if only one does so. The Article is in its nature one of procedure only for the mutual information (it may be) of the parties, and entirely for the assistance of the Arbitrators, but mainly for the benefit and advantage of the parties themselves, who, in such a matter, may or may not choose to avail themselves of it, nor would any practical inconvenience or disadvantage arise to either party (in case the arbitration proceed) from an agreement not to present such arguments until a later date, the Arbitrators having full power at any later date to admit such written or oral arguments as they may think fit. Her Majesty's Government would make no difficulty as to a suitable arrangement for the presentation of the arguments if a Convention were signed by Mr. Fish and Sir Edward Thornton and ratified by the Senate, although there was not time for the ratifications to be exchanged in London previously to the 15th of June.

Third note thus:

[*Earl Granville to General Schenck.*]

Sir: I have to state to you that with the view of obviating the difficulty connected with the meeting of the Arbitrators at Geneva on the 15th instant, and the presentation of the written or printed argument under the fifth Article of the Treaty on that day, Her Majesty's Government are still ready either to agree in an application to the Arbitrators on the 15th to adjourn at once without the presentation of the argument of either Government, or to conclude a new arrangement with the treaty-making power of the United States for the enlargement of the time; or, instead of the amendments to the Treaty Article which Her Majesty's Government last proposed, they are willing to conclude it with the following additions: First, to insert after the paragraph, as altered by the Senate, the words, "the remote or indirect losses mentioned in this agreement, being losses arising remotely or indirectly from, and not directly from, acts of belligerents." Second, to insert after this paragraph another paragraph: "further, the stipulations of this Convention as to future conduct have no reference to acts of intentional ill faith or willful violation of international duties." The objections to negotiating on a proposition which involves the idea that either country may be guilty of intentional ill faith or willful violation of its international duties might be met by such a declaration as that proposed in the second of these additions being inserted in the Treaty Article, or, if the United States should prefer it, by an interchange of notes, approved by the Senate at the time of ratification.

SCHENCK.

No. 92.

General Schenck to Mr. Fish.

[Telegram.]

London, *June* 6, 1872. (Received 7.20 p. m.)

Since my former telegram to-day I have seen Lord Granville and stated to him that it is useless to expect that any change can be made in the Article as agreed to by the Senate, and I communicated to him what you authorized me to say, that our Government would regard the new rule as consideration for and settlement of the three classes of indirect claims. I thought it best to put that part of my communication in formal writing and have handed him a note as follows:

[*General Schenck to Earl Granville.*]

My Lord: In the conversation we had yesterday and which was resumed this morning, you stated to me that Her Majesty's Government have always thought the language proposed by them in the draught Article as it stands sufficient for the purpose of removing and putting an end to all demand on the part of the United States in respect to those indirect claims which they put forth in their Case at Geneva, and to the admissibility of which Her Majesty's Government have objected, but that there were those who doubted whether the terms used were explicit enough to make that perfectly clear and to prevent those same claims from being put forward again. I concurred with you in your view as to the sufficiency of the language used in that clause of the proposed Article, and which the Government of the United States had accepted, and I repelled the idea that anybody should think it possible that the Government of the United States, if they should yield those claims for a consideration in a settlement between the two countries, would seek to bring them up in the future or would insist that they were still before the Arbitrators for their consideration. I am now authorized, in a telegraphic dispatch received to-day from Mr. Fish, to say that the Government of the United States regards the new rule contained in the proposed Article as the consideration for and to be accepted as a final settlement of the three classes of the indirect claims put forth in the Case of the United States, to which the Government of Great Britain have objected.

SCHENCK.

No. 93.

Mr. Fish to General Schenck.

[Telegram.—Extract.]

Washington, *June* 7, 1872.

Your telegrams of yesterday received last evening. I have been quite ill and unable to reply sooner or fuller.

The first criticism on the language of the Senate amendment to the proposed Article is regarded as hypercritical and strained. It is so regarded here generally, and a discussion upon it in the Senate or in the press would be inexpedient and would not tend to advance a settlement.

The Senate is very impatient for adjournment; and the Senate, the public, and the press are impatient over the delays, and what they regard as either captious or dilatory objections and proposals to amend or explain what has been intended and proposed in the most perfect good faith.

The new Article can be ratified, as I said in a recent telegam; but if amendments be proposed or explanatory notes requiring the Senate's approval are submitted, it will be impossible to obtain ratification. To insist upon any such course is to defeat the Article.

This Government cannot adopt the argument of Lord Granville respecting the putting in of the arguments of both Governments on the 15th. We think the Treaty requires it to be done, and that the requirements can be dispensed with only by a treaty.

The Senate will adjourn on Monday. I see no possibility of an agreement upon anything else than the Article as agreed to by the Senate.

* * * * * * *

FISH.

No. 94.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 7, 1872. (Received 7 p. m.)

I have just received the following from Lord Granville:

[*Earl Granville to General Schenck.*]

SIR: In a telegram which I have this morning received from Sir Edward Thornton he remarks with reference to the first of the two passages which, in my letter to you of the 5th instant, I stated that Her Majesty's Government proposed to insert in the Article, in lieu of the amendments last proposed by them, that Mr. Fish had frequently, in conversation with him, objected to the use of the word "belligerent," and wishes that indirect claims arising out of acts committed by persons other than recognized belligerents, as well as belligerents, should be agreed to be not admissible for the future. If Mr. Fish should still entertain the same opinion, Her Majesty's Government would be quite content that the passage in question should run thus: "The remote or indirect losses mentioned in this agreement, being losses arising remotely or indirectly, and not directly from acts of war."

I only add that I have given Lord Granville no ground for believing that you will assent to any expression of the rule except that of the Senate amendment.

SCHENCK.

No. 95.

Mr. Fish to General Schenck.

[Telegram.]

WASHINGTON, *June* 8, 1872.

The reference to any conversation with Thornton is unjustified. I have invariably told him, as I have told you, that it is useless to discuss amendments to the proposed Article. In my telegram of 31st, I said the British amendment left a large class of very probable cases unprovided for. In conversation with Thornton I told him the same, and indicated some of those cases arising from the use of the word "belligerent," but I indicated no change that was desired by me or by this Government. I thought the amendment proposed objectionable, and the last suggested amendment in telegram of yesterday does not remove the objection, and I refer to my telegram of 5th and repeat emphatically the last clause.

FISH.

No. 96.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 8, 1872.

I received your telegram of yesterday early this morning, and communicated it immediately to Lord Granville. I supposed any new proposals this Government might make, or any attempt to arrive at agreement after that, would be necessarily at Washington between you and Sir Edward Thornton, under such instructions as he might receive. I thought there was no room for new suggestions, but this evening Lord Granville sends me the following:

[*Earl Granville to General Schenck.*]

SIR: It appears to Her Majesty's Government, from a review of the correspondence between the two Governments, that an agreement on the supplemental Article might probably be arrived at if sufficient time were given for discussion. If, therefore, the Treaty is to be maintained, an adjournment of the meeting of the Arbitrators from the 15th instant has become absolutely necessary. With this view, I have the honor to propose that on the meeting of the Arbitrators on that day a joint application shall be made for an adjournment for eight months. If the Government of the United States concur in making an application for adjournment, it is the intention of Her Majesty's Government to deliver to the Arbitrators on the 15th instant the summary of their argument under the fifth Article of the Treaty, accompanied by a declaration, of which I have the honor to inclose you a copy for the information of your Government.

"*Sketch of draught note in presenting summary.*

"The undersigned Agent of Her British Majesty has the honor to deliver herewith to Count Sclopis, &c., the printed argument, showing the points and referring to the evidence on which the Government of Her Britannic Majesty relies, as required by the fifth Article of the Treaty of Washington. The undersigned is instructed by the Government which he represents to state that the printed argument is only delivered to the Tribunal conditionally on the adjournment, requested in the note which he had the honor to address to the Tribunal this day jointly with the Agent of the United States, being carried into effect, and subject to the notice which the undersigned has the honor hereby to give, that it is the intention of Her Majesty's Government to cancel the appointment of the British Arbitrator, and to withdraw from the arbitration at the close of the term fixed for the adjournment, unless the difference which has arisen between the two Governments as to the claims for indirect losses, referred to in the note which the undersigned had the honor to address to Count Sclopis on the 15th of April, shall have been removed."

SCHENCK.

No. 97.

General Schenck to Mr. Fish.

No. 252.] LEGATION OF THE UNITED STATES,
London, June 8, 1872. (Received June 21.)

SIR: I have the honor to forward herewith copies of all the correspondence which has taken place between Lord Granville and myself relative to the proposed new Treaty Article in regard to indirect claims, since the 31st ultimo.

I am, &c.,

ROBT. C. SCHENCK.

[Inclosure 1 in No. 97.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 1, 1872.

SIR: In reply to the communication which I received from you this morning, I beg to inform you that Her Majesty's Government hold that by the Article adopted by the Senate, cases of bad faith and willful misconduct are brought within the scope of the proposed agreement which deals with pecuniary compensation.

It appears to be the view of the Government of the United States that such cases are not a fit subject of pecuniary compensation, and I am informed by Sir Edward Thornton that Mr. Fish is of opinion that the article adopted by the Senate is capable of improvement.

The President thinks that the Article last proposed by Her Majesty's Government is also capable of improvement.

The American Government state that "it is not believed that there is any such difference of object between the two Governments in the definition and limitation which each desires to places upon the liability of a neutral, as to prevent an agreement on the language in which to express it, if time be allowed for the exchange of views by some other means than the telegraph."

The British Government must decline to sign a treaty which is not in conformity with their views, and which does not express the principles which the American Government believes to be entertained by both parties to the negotiation, and which, immediately after being signed, would become the subject of negotiation with a view to its alteration.

In this position they repeat their readiness to extend the time allowed for the Arbitration to meet at Geneva, and they have, as your are aware, provided Sir E. Thornton with full powers to sign a treaty for this purpose; or they are willing to concur in a joint application to the Tribunal of Arbitration at once to adjourn the proceedings of the arbitration, which they are advised it is within the competence of the Arbitrators to do upon such an application without a fresh treaty.

I have, &c.,

GRANVILLE.

[Inclosure 2 in No. 97.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, June 1, 1872.

MY LORD: I received an hour ago your note of this date, in which you reply to the telegram of Mr. Fish, which I communicated to you this morning, and inform me that Her Majesty's Government decline to sign a treaty of the character and with the arrangement for the future, suggested by Mr. Fish, but repeat their readiness to extend the time for the Arbitrators to meet at Geneva, for which purpose Sir Edward Thornton has full powers to sign a treaty; or they are willing, you state, to concur in a joint application to the Tribunal of Arbitration to adjourn their proceedings, which they are advised it is within the competence of the Arbitrators to do upon such an application without a fresh treaty.

I have sent the full text of your note to Mr. Fish by telegraph.

I have, &c.,

ROBT. C. SCHENCK.

[Inclosure 3 in No. 97.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 3, 1872.

SIR: In reply to the question which you put to me this morning, I have to state to you that Her Majesty's Government consider that the Arbitrators must no doubt meet on the 15th of June, but the fifth Article of the Treaty, though it contemplates the delivery of written arguments on that day, does not make the further prosecution of the arbitration impossible, if, on that day, *neither party* presents any written argument. The Arbitrators have full power to adjourn, and they have also full power to call, after the 15th, for any further statements or arguments, written or oral, from time to time, as they may think fit. If, therefore, both parties agree not to present any argument till a later day than the 15th, requesting the Arbitrators to adjourn, and if the Arbitrators should, on any day to which they may have adjourned, accept the argument which both parties may then wish to tender to them, this will be quite within their power.

I have, &c.,

GRANVILLE.

[Inclosure 4 in No. 97.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 5, 1872.

SIR: I laid before the Cabinet the telegraphic message from Mr. Fish, which you communicated to me on the 3d instant.

That message is only in answer to a portion of the objections raised by Her Majesty's Government to the alterations in the draught Article proposed by the Senate, and does not notice the other points to which I called your attention in my letter of the 28th ultimo, and which were intended to show that the effect of those alterations is to transfer the application of the adjectives "indirect" and "remote" from one subject with reference to which they have been used in the recent correspondence, viz, claims made as resulting *from the "acts committed"* by certain vessels, to a different subject, viz, those made as resulting from "*the failure to observe* neutral obligations." It is evident that a loss which is direct and immediate with reference to the former subject, may be indirect and remote with reference to the latter, and this appears to Her Majesty's Government to be actually the case, with respect to the claims which it is assumed the Government of the United States still intend to make before the Arbitrators. The Government of the United States must see that it is impossible for Her Majesty's Government to authorize Her Majesty's Minister at Washington to sign a treaty, the words of which appear to Her Majesty's Government to say one thing, upon a mere understanding to the contrary effect.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 5 in No. 97.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 5, 1872.

SIR: There is a difference of opinion between the Government of the United States and Her Majesty's Government as to the necessity of presenting the written or printed arguments on the 15th of June. I beg to suggest to you that, 1st, the fifth Article is directory; it speaks of something which "it shall be the duty of the Agents" of the two Governments to do within a certain time. It does not say that the Treaty is to *lapse* if this duty is neglected or not performed by the Agents or Agent of both Governments, or of either of them. 2d. It would hardly be suggested that the Treaty would lapse, if *one only* of the two Agents omitted to lodge a written or printed argument, such as this Article contemplates. Yet there is no more reason for saying that such a written or printed argument, to be then delivered, is a *sine qua non* of the Treaty, if *both* Agents omit it, than if *one only* does so. 3d. The Article is, in its nature, one of *procedure* only, for the mutual information (it may be) of the parties, and entirely for the assistance of the Arbitrators, but mainly for the benefit and advantage of the parties themselves, who, in such a matter, may or may not choose to avail themselves of it. 4th. Nor would any practical inconvenience or disadvantage arise to either party (in case the arbitration proceeds) from an agreement not to present such arguments until a later date, the Arbitrators having full power at any later date to admit such written or oral arguments as they may think fit.

Her Majesty's Government would make no difficulty as to a suitable arrangement for the presentation of the arguments if a convention were signed by Mr. Fish and Sir Edward Thornton and ratified by the Senate, although there was not time for the ratifications to be exchanged in London previously to the 15th of June.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 6 in No. 97.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 5, 1872.

SIR: I have to state to you that with the view of obviating the difficulty connected with the meeting of the Arbitrators at Geneva on the 15th instant, and the presentation of the written or printed argument under the fifth Article of the Treaty on that day, Her Majesty's Government are still ready either to agree in an application to the Arbitrators on the 15th to adjourn at once without the presentation of the argument of either Government, or to conclude a new arrangement with the treaty-making power of the United States for the enlargement of the time; or, instead of the amendments to the Treaty Article, which Her Majesty's Government last proposed, they are willing to conclude it with the following additions: First, to insert after the paragraph, as altered by the Senate, the words "the remote or indirect losses mentioned in this agreement, being losses arising remotely or indirectly and not directly from acts of belligerents." Secondly, to insert after this paragraph another paragraph: "Further, the stipulations of this Convention as to future conduct have no reference to acts of intentional ill-faith or willful violation of international duties."

The objection to negotiating a proposition which involves the idea that either country may be guilty of intentional ill-faith or willful violation of its international duties might be met by such declaration as that proposed in the second of these additions being inserted in the Treaty Articles, or, if the United States should prefer it, by an interchange of notes approved by the Senate at the time of ratification.

I have the honor to be, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 7 in No. 97.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, June 6, 1872.

MY LORD: I had the honor to receive late last night your three notes of yesterday's date, containing several suggestions for a modification of the proposed supplementary Article, and with a further explanation of the views and reasons therefor of Her Majesty's Government, and in which you also present again suggestions and views in relation to questions about the meeting of the Arbitrators and the presentation of arguments on the 15th instant.

Without commenting on or replying to these suggestions, views, or reasons which you desire to bring thus again and more specifically to the notice of my Government, I have to inform you that I have hastened to transmit the full text of each of these communications by telegraph to Mr. Fish, at Washington.

I have the honor to be, my Yord, with the highest consideration, your Lordship's most obedient servant,

ROBT. C. SCHENCK.

[Inclosure 8 in No. 97.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, June 6, 1872.

MY LORD: In the conversation we had yesterday, and which was resumed this morning, you stated to me that Her Majesty's Government have always thought the language proposed by them in the draught Article, as it stands, sufficient for the purpose of removing and putting an end to all demand on the part of the United States in respect to those indirect claims which they put forth in their Case at Geneva, and to the admissibility of which Her Majesty's Government have objected; but that there were those who doubted whether the terms used were explicit enough to make that perfectly clear, and to prevent those same claims from being put forward again. I concurred with you in your view as to the sufficiency of the language used in that clause of the proposed Article, and which the Government of the United States had accepted; and I repelled the idea that anybody should think it possible that the Government of the United States, if they should yield those claims for a consideration in a settlement between the two countries, would seek to bring them up in the future, or would insist that they were still before the Arbitrators for their consideration.

I am now authorized, in a telegraphic dispatch received to-day from Mr. Fish, to say that the Government of the United States regards the new rule contained in the proposed Article as the consideration for, and to be accepted as, a final settlement of the three classes of the indirect claims put forth in the Case of the United States to which the Government of Great Britain have objected.

I have the honor to be, with the highest consideration, my Lord, your Lordship's most obedient servant,

ROBT. C. SCHENCK.

[Inclosure 9 in No. 97.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 7, 1872.

SIR: In a telegram, which I have this morning received from Sir Edward Thornton, he remarks, with reference to the first of the two passages which, in my letter to you of the 5th instant, I stated that Her Majesty's Government proposed to insert in the article in lieu of the amendments last proposed by them, that Mr. Fish had frequently, in conversation with him, objected to the use of the word "belligerent," and wishes that indirect claims arising out of acts committed by persons other than recognized belligerents, as well as belligerents, should be agreed to be not admissible for the future.

If Mr. Fish should still entertain the same opinion, Her Majesty's Government would be quite content that the passage in question should run thus:

"The remote or indirect losses mentioned in this agreement, being losses arising remotely or indirectly, and not directly, from acts of war."

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 10 in No. 97.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, June 8, 1872.

MY LORD: I received at seven o'clock last evening your note of yesterday referring to what Sir Edward Thornton has stated to you in regard to Mr. Fish's objection to the word "belligerent," and suggesting a modification of language to obviate that objection.

I transmitted the full text of your note by telegraph to Mr. Fish immediately. At the same time I informed him that I am giving your Lordship no ground for believing that the Government of the United States will be able now to assent to any change of the rule as expressed by the Senate amendment.

I have the honor to be, with the highest consideration, your Lordship's most obedient servant,

ROBT. C. SCHENCK.

No. 98.

Mr. Fish to General Schenck.

[Telegram.]

DEPARTMENT OF STATE,
Washington, June 9, 1872.

Your telegram received at midnight. The proposal contained in Lord Granville's note of yesterday cannot be accepted by this Government. In my dispatch of June 2 I said that in the opinion of this Government the Arbitrators have the power to adjourn either on their own motion or on that of either party, and that if the arguments be put in on both sides on 15th, and Great Britain moves for an adjournment, we will assent, but we cannot be parties to a joint application for adjournment. This Government has no reason to ask an adjournment, and if it abstain from resisting a motion to adjourn, it will do so from courtesy to Great Britain. Nor can this Government directly or indirectly be a party to an agreement or understanding whereby Great Britain is to submit her argument to the Tribunal conditionally or under any protest or reservation. The obligations of the Treaty are reciprocal, and no right is reserved to either Government of any qualified action while the other is fulfilling the spirit and the letter of the Treaty. The United States will feel itself bound to protest against a conditional presentation of the argument on the part of Great Britain, or any assumed reservation of right on her part to withdraw.

If the British Government have the right or the desire to withdraw from the arbitration, or to cancel the appointment of their Arbitrator, they must do so without asking the consent of this Government.

If such notice of withdrawal as is suggested in Lord Granville's note be given, it will be the duty of the American Agent and Counsel to repel it very decidedly, and in terms which self-respect will make necessary. Such notice would instantly terminate all further negotiations on the part of this Government. You will send to Davis copy of the proposed Article, and inform him fully of the present condition of the negotiation between the two Governments, and you will send a copy of your telegram of yesterday and of this reply, and will keep him advised of any further correspondence or proceedings. Send copies of all the recent correspondence necessary to inform him and the Counsel of what has been done.

FISH.

No. 99.

Mr. Fish to Mr. Davis.

[Telegram.]

DEPARTMENT OF STATE,
Washington, June 9, 1872.

You and the Counsel should be in Geneva on 15th regardless of any action which Great Britain may be supposed to be likely to take. If deemed necessary, notice must be given to Arbitrators that you will be there to deliver argument and to proceed according to the Treaty. I have telegraphed Schenck to send you full information of present state of negotiations, with copies of recent correspondence, and especially of a note of Granville and of my reply of this date. Should any notice such as is indicated in Granville's note be given, a decided protest must be entered against any qualified or conditional appearance before the Tribunal. The course and the notice suggested by Granville will be not only a failure to observe her treaty obligations with this Government on the part of Great Britain, but will also be an indignity to the friendly Powers who have appointed Arbitrators to attend a Tribunal before which two parties are to appear in good faith. Use calm and measured language, avoiding menace or irritation in whatever is said. You will communicate this and other telegrams, and all information received from Schenck to Counsel, who will consider them addressed to them, and will please regulate their course accordingly. In the very great uncertainty as to the course which England intends to observe, it is difficult, if not impossible, to give instructions to meet the contingencies which may arise. If Great Britain put in her argument on 15th without any offensive notice, and then moves for an adjournment, you and Counsel on our side will say that the United States do not object to the adjournment.

FISH.

No. 100.

Mr. Davis to Lord Tenterden.

PARIS, *June* 10, 1872. (Received June 11.)

MY LORD: I have the honor to transmit herewith, for your Lordship's information, a copy of a letter this day addressed by me to each of the Arbitrators in the Tribunal of Arbitration constituted under the provisions of the Treaty concluded at Washington, May 8, 1871, between the United States and Her Britannic Majesty.

I have, &c.,

J. C. BANCROFT DAVIS.

[Inclosure in No. 100.]

Mr. Davis to M. Sclopis.[1]

PARIS, *June* 10, 1872.

SIR: I have received from my Government instructions, in order to avoid possible misapprehensions, to inform you that the United States will be present, by their Agent and Counsel, at the Hotel de Ville, in Geneva, on the 15th instant, pursuant to the order of adjournment made by the Tribunal on the 16th day of December last, and will then and there be prepared to present their argument, in accordance with the requirements of the Treaty of May 8, 1871, and to hold themselves subject to such further directions of the Tribunal as may be made, under the provisions of the Treaty, upon the issues raised by the various papers which have been presented under the Treaty by the two Governments, now in the possession of the Tribunal.

I have, &c.,

J. C. BANCROFT DAVIS.

No. 101.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 11, 1872. (Received at 11.50 a. m.)

Received yesterday morning your telegram of 9th, and communicated to Lord Granville immediately all except the instructions at the close. Late last night, after a long Cabinet, he sent me the following note:

[*Earl Granville to General Schenck.*]

SIR: Her Majesty's Government understand that the Government of the United States decline any agreement between the two Governments, unless the Government of Her Majesty consent to sign the supplemental Article as altered by the Senate, to which Her Majesty's Government have stated their objections, or unless without any declaration as to our doing so *sub modo* they agree to take a further step in the proceedings before the Arbitrators, while a misunderstanding exists as to what both parties agreed to submit to arbitration. Mr. Fish states to you that the Government of the United States have no reason to ask for an adjournment of the Arbitration at Geneva. The reason which actuated Her Majesty's Government in proposing it was to obtain time for the conclusion of an agreement at which both parties had already nearly arrived. Her Majesty's Government will have now to consider what may be the course most consistent with the declarations they have heretofore made most respectful to the Tribunal of Arbitration and the most courteous to the United States. The British Arbitrator will proceed to Geneva, and at the meeting of the Tribunal the British Agent will be directed to present to them a statement to the following effect:

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[1] Similar letters were addressed to Baron Itajuba, M. J. Stæmpfli, Mr. Adams, and the Lord Chief Justice.

"Her Majesty's Government regret to be under the necessity of informing the Arbitrators that the difference between Her Majesty's Government and the Government of the United States referred to in the note which accompanied the presentation of the British Counter Case on the 15th of April last, has not yet been removed. Her Majesty's Government have, however, been engaged in negotiations with the Government of the United States, which have continued down to the present time, for the solution of the difficulty which has thus arisen, and they do not abandon the hope that, if further time were given for that purpose, such a solution might be found practicable. Under these circumstances, the course which Her Majesty's Government would respectfully request the Tribunal to take is to adjourn the present meeting for such a period as may enable a supplementary convention to be still concluded and ratified between the High Contracting Parties. In the mean time the High Contracting Parties not being in accord as to the subject-matter of the reference to arbitration, Her Majesty's Government regret to find themselves unable to deliver the written argument, which their Agent is directed to put in under the fifth Article of the Treaty, (although that argument has been duly prepared and is in the hands of their Agent,) or to take any other steps at the present time in the intended arbitration. It will of course be understood by the Tribunal that Her Majesty's Government (while they would consider the Tribunal to have full power to proceed at the end of the period of adjournment if the difference between the High Contracting Parties should then have been removed, notwithstanding the non-delivery on this day of the argument by the British Agent) continue, while requesting this adjournment, to reserve all Her Majesty's rights in the event of an agreement not being finally arrived at in the same manner as was expressed in the note which accompanied the British Counter Case."

SCHENCK.

No. 102.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 11, 1872. (Received at 3.40 p. m.)

Have acknowledged Lord Granville's note telegraphed you this morning, saying I have transmitted it to my Government, at Washington, where I have no doubt it will be received and considered in the same friendly spirit in which it is intended, and as a sincere effort yet to preserve the Treaty between the two countries.

SCHENCK.

No. 103.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 12, 1872—3. 45 p. m.
(Received at 10.45 p. m.)

Have this moment received another long communication[1] from Lord Granville. It is in a very friendly spirit. He recapitulates the history of the negotiation for a supplementary Article, and then proceeds as follows:

[*Earl Granville to General Schenck.*]

Her Majesty's Government believe, therefore, that they have met all the objections, so far as they have been informed of them, which have been from time to time advanced to the suggestions which they have made, and that this recapitulation of the negotiation shows that, unless Her Majesty's Government have erred in their view of the probable intention of the Senate, the two Governments are substantially agreed, or that, if there is any difference between them in principle, it is reduced to the smallest proportions.

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[1] For full text of this note see p. 573.

On the other hand, the objections which Her Majesty's Government entertain, and have expressed, to the language of the amendments made by the Senate, are founded upon reasons to which they attach the greatest importance, though they think it possible that the Senate did not intend to use that language in the sense which, according to the view of Her Majesty's Government, the words properly bear.

The Government of the United States have stated in the telegraphic message from Mr. Fish, to which I have already referred, that there are some cases not provided for in the words suggested by Her Majesty's Government on the 30th of May. If the Government of the United States are of opinion that these cases are not covered by the last proposed form of Article, and will state what are the cases in question, Her Majesty's Government cannot but think that the two Governments might probably agree upon a form of words which would meet them without being open to the objections which they have felt to the wording of the Article as proposed by the Senate. Her Majesty's Government have never put forward their words as an ultimatum, and they will be willing to consider at the proper time other words, if an adjournment is agreed upon.

I shall make no reply at present to this communication, not having from you any answer to or comment on Granville's note of 10th, telegraphed yesterday morning. Have sent Davis copies of all notes and telegrams. He goes to Geneva to-morrow.

SCHENCK.

No. 104.

General Schenck to Mr. Fish.

No. 254.] LEGATION OF THE UNITED STATES,
London, June 13, 1872. (Received June 25.)

SIR: With this I transmit copies of all correspondence with the Foreign Office.

I send also reports of proceedings in both Houses of Parliament, and articles from the leading journals since that date, which will serve to inform you better than anything else could do of the excitement and anxiety here occasioned by the imminent prospect of the failure of the arbitration at Geneva.

Up to this time I am without any reply from you to my two telegrams of the 11th, and one of yesterday, (12th,) and I am, therefore, unable to inform Lord Granville whether you are willing to give any consideration to his last two communications. You have probably, however, telegraphed your further views and instructions direct to Mr. Davis. He goes from Paris to Geneva to-day, and has been furnished with copies of all notes and telegrams relating to recent negotiations and the points that have been in controversy.

I have the honor to be, sir, your obedient servant,

ROBT. C. SCHENCK.

[Inclosure 1 in No. 104.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 8, 1872.

SIR: It appears to Her Majesty's Government from a review of the correspondence between the two Governments that an agreement on the supplemental Article might probably be arrived at, if sufficient time were given for discussion. If, therefore, the

Treaty is to be maintained, an adjournment of the meeting of the Arbitrators from the 15th instant has become absolutely necessary. With this view I have the honor to propose that on the meeting of the Arbitrators on that day, a joint application shall be made for an adjournment for eight months.

If the Government of the United States concur in making an application for adjournment, it is the intention of Her Majesty's Government to deliver to the Arbitrators on the 15th instant the summary of their argument under the fifth Article of the Treaty, accompanied by a declaration of which I have the honor to inclose you a copy for the information of your Government.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

[Inclosure 2 in No. 104.]

Sketch of draught note in presenting summary.

The undersigned Agent, of Her Britannic Majesty, has the honor to deliver herewith to Count Sclopis, &c., the printed argument, showing the points and referring to the evidence on which the Government of Her Britannic Majesty relies, as required by the fifth Article of the Treaty of Washington.

The undersigned is instructed by the Government which he represents to state that this printed argument is only delivered to the Tribunal conditionally on the adjournment requested in the note which he had the honor to address to the Tribunal this day, jointly with the Agent of the United States, being carried into effect, and subject to the notice, which the undersigned has the honor hereby to give, that it is the intention of Her Majesty's Government to cancel the appointment of the British Arbitrator, and to withdraw from the arbitration at the close of the term fixed for the adjournment, unless the difference which has arisen between the two Governments as to the claims for indirect losses referred to in the note which the undersigned had the honor to address to Count Sclopis on the 15th of April shall have been removed.

[Inclosure 3 in No. 104.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, June 8, 1872.

MY LORD: I have received this evening (7.30 p. m.) your note of to-day's date, communicating for the information of my Government a copy of a sketch of draught note to be used in presenting to the Arbitrators a summary of their argument on the 15th instant, such draught note being based on a proposed application for an adjournment of the arbitration for eight months.

I shall immediately transmit your note and the inclosure by telegraph to Mr. Fish.

I have the honor to be, with the highest consideration, your Lordship's most obedient servant,

ROBERT C. SCHENCK.

[Inclosure 4 in No. 104.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 10, 1872.

SIR: Her Majesty's Government understand that the Government of the United States decline any agreement between the two Governments, unless the Government of Her Majesty consent to sign the supplemental Article as altered by the Senate, to which Her Majesty's Government have stated their objections, or unless they agree, without any declaration as to their doing so *sub modo* to take a further step in the proceeding before the Arbitrators, while a misunderstanding exists as to what both parties agreed to submit to arbitration.

Mr. Fish states to you that the Government of the United States have no reason to ask for an adjournment of the arbitration at Geneva.

The reason which actuated Her Majesty's Government in proposing it, was to obtain time for the conclusion of an agreement at which both parties had already nearly arrived.

Her Majesty's Government will have now to consider what may be the course most consistent with the declarations they have heretofore made, most respectful to the Tribunal of Arbitration, and the most courteous to the United States.

The British Arbitrator will repair to Geneva, and at the meeting of the Tribunal the British Agent will be directed to present them a statement to the following effect:

"Her Majesty's Government regret to be under the necessity of informing the Arbitrators that the difference between Her Majesty's Government and the Government of the United States, referred to in the note which accompanied the presentation of the British Counter Case on the 15th of April last, has not yet been removed. Her Majesty's Government have, however, been engaged in negotiations with the Government of the United States, which have continued down to the present time, for the solution of the difficulty which has thus arisen; and they do not abandon the hope that, if further time were given for that purpose, such a solution might be found practicable.

"Under these circumstances, the course which Her Majesty's Government would respectfully request the Tribunal to take is, to adjourn the present meeting for such a period as may enable a supplementary convention to be still concluded and ratified between the High Contracting Parties.

"In the mean time, the High Contracting Parties not being in accord as to the subject-matter of the reference to arbitration, Her Majesty's Government regret to find themselves unable to deliver the written argument which their Agent is directed to put in under the Vth Article of the Treaty, (although that argument has been duly prepared, and is in the hands of their Agent,) or to take any other step at the present time in the intended arbitration.

"It will, of course, be understood by the Tribunal that Her Majesty's Government (while they would consider the Tribunal to have full power to proceed at the end of the period of adjournment, if the difference between the High Contracting Parties should then have been removed, notwithstanding the non-delivery on this day of the argument by the British Agent) continue, while requesting this adjournment, to reserve all Her Majesty's rights in the event of an agreement not being finally arrived at, in the same manner as was expressed in the note which accompanied the British Counter Case."

I have the honor to be, with high consideration, sir, your most obedient, humble, servant,

GRANVILLE.

[Inclosure 5 in No. 104.]

General Schenck to Earl Granville.

LEGATION OF THE UNITED STATES,
London, June 11, 1872.

MY LORD: I had the honor to receive late last night your note of yesterday, referring to the present state of the negotiations between the Government of the United States and Her Majesty's Government in relation to the proposed supplementary Article, or to an adjournment of the arbitration at Geneva; and informing me that Her Majesty's Government will now have to consider what may be the course most consistent with the declarations they have heretofore made, most respectful to the Tribunal of Arbitration, and the most courteous to the United States. Your Lordship then proceeds to state that the British Arbitrator will repair to Geneva, where the British Agent, at the meeting of the Tribunal, will be directed to present them a statement to the effect that the difference between the two Governments referred to in the note which accompanied the presentation of the British Counter Case, not having been removed, although negotiations to that end have been engaged in and continued down to the present time, Her Majesty's Government do not abandon the hope that if further time were given for that purpose such a solution might be found practicable. And that, under these circumstances, the course which Her Majesty's Government would respectfully request the Tribunal to take is, to adjourn for such a period as may enable a supplementary convention to be still concluded and ratified between the High Contracting Parties. And you further inform me that, in the mean time, the High Contracting Parties not being in accord as to the subject-matter of the reference to arbitration, Her Majesty's Government regret to find themselves unable to deliver their written argument under the Vth Article of the Treaty, although that argument is duly prepared and in the hands of their Agent, or to take any other step at the present ime in the intended arbitration. And you add that it will of course be understood by he Tribunal that while Her Majesty's Government would consider the Tribunal to ave full power to proceed at the end of the period of adjournment, if the difference etween the High Contracting Parties should then have been removed, notwithstanding he non-delivery on that day of the argument by the British Agent, they will continue, while requesting this adjournment, to reserve all Her Majesty's rights in the event of n agreement being finally arrived at, in the same manner as was expressed in the note which accompanied the British Counter Case.

This note, my Lord, in its full text, I transmitted this morning to my Government at Washington, where I have no doubt it will be received and considered in the friendly spirit in which it is intended, and as a sincere effort yet to preserve the Treaty between the two countries; and I will not fail to communicate to you at the earliest moment the answer which may come from Mr. Fish.

I have the honor to be, with the highest consideration, my Lord, Your Lordship's most obedient servant,

ROBT. C. SCHENCK.

[Inclosure 6 in No. 104.]

Earl Granville to General Schenck.

FOREIGN OFFICE, *June* 11, 1872.

SIR: It may be useful that I should briefly recapitulate the negotiations which have passed with respect to the supplementary Treaty Article in order that there may be a distinct and connected record of them.

On the 10th of May Her Majesty's Government, although they considered that the proposal of the form of Article would come more conveniently from the United States Government, proposed the draught Article as originally forwarded to you on that day.

This draught Article was substantially the same as the draught note, the interchange of which had formed the subject of previous correspondence.

On the 26th of May Her Majesty's Government learned that the Senate had recommended the President to negotiate a convention on the basis of this draught Article, with the substitution of two other paragraphs for the fourth and fifth paragraphs of the English draught, as follows: "Whereas the Government of Her Britannic Majesty has contended in the recent correspondence with the Government of the United States as follows, namely: That such indirect claims as those for the national losses stated in the Case presented on the part of the Government of the United States to the Tribunal of Arbitration at Geneva, to have been sustained by 'the loss in the transfer of the American commercial marine to the British flag; the enhanced payments of insurance; the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion;' firstly, were not included, in fact, in the Treaty of Washington; and further, and secondly, should not be admitted in principle as growing out of the acts committed by particular vessels, alleged to have been enabled to commit depredations upon the shipping of a belligerent by reason of such a want of due diligence in the performance of neutral obligations as that which is imputed by the United States to Great Britain; and whereas the Government of the United States has contended that the said claims were included in the Treaty; and whereas both Governments adopt for the future the principle that claims for remote or indirect losses should not be admitted as the result of the failure to observe neutral obligations, so far as to declare that it will hereafter guide the conduct of both Governments in their relations with each other:

"Now, therefore, in consideration thereof, the President of the United States, by and with the advice and consent of the Senate thereof, consents that he will make no claim on the part of the United States in respect of indirect losses, as aforesaid, before the Tribunal of Arbitration at Geneva."

Her Majesty's Government objected, as I informed you in my letter of the 27th of May, to the definition as therein expressed of the principle which both Governments are prepared to adopt for the future, as too vague, and proposed the substitution of the words, "of a like nature," for the words, "for remote or indirect losses," and the substitution of the words, "such want of due diligence on the part of a neutral," for the words, "the failure to observe neutral obligations."

On the 29th of May you communicated to me the substance of a telegraphic dispatch from Mr. Fish, stating that the Government of the United States declined to agree to these alterations, as the establishment of the principle embodied in the Article as assented to by the Senate had been its object in adhering to that Article. You had previously explained to me, on the preceding day, that what you considered that the Government of the United States desired was the establishment of a general principle to be applied to cases as they might arise, and not limited to particular cases or circumstances which may or may not ever occur.

Her Majesty's Government did not pretend that the words suggested, by themselves, were incapable of improvement, and made another proposal to you on the 30th of May, which they trusted would meet the views of both Governments, as follows:

"Whereas the Government of Her Britannic Majesty has contended in the recent correspondence with the Government of the United States as follows, namely:

"That such indirect claims as those for the national losses stated in the Case presented on the part of the Government of the United States to the Tribunal of Arbitration at Geneva, to have been sustained by 'the loss in the transfer of the American commercial marine to the British flag; the enhanced payments of insurance; the prolongation of the war; and the addition of a large sum to the cost of the war and the suppression of the rebellion;' firstly, were not included in fact in the Treaty of Washington; and further, and secondly, should not be admitted in principle as growing out of the acts committed by particular vessels alleged to have been enabled to commit depredations upon the shipping of a belligerent by reason of such a want of due diligence in the performance of neutral obligations as that which is imputed by the United States to Great Britain;

"And whereas the Government of the United States has contended that the said claims were included in the Treaty;

"And whereas both Governments adopt for the future the principle that claims against neutrals for remote and indirect losses should not be admitted as resulting from the acts of belligerents, which such belligerents may have been enabled to commit by reason of a want of due diligence on the part of a neutral in the performance of neutral obligations, so far as to declare that this principle will hereafter guide the conduct of both Governments in their relations with each other:

"Now, therefore, in consideration thereof, the President of the United States, by and with the advice and consent of the Senate thereof, consents that he will make no claim on the part of the United States, before the Tribunal of Arbitration at Geneva, in respect of the several classes of indirect losses hereinbefore enumerated."

On the 31st of May, Her Majesty's Government were informed by Sir E. Thornton that Mr. Fish acknowledged that the Article recommended by the Senate was capable of improvement, and thought that the one proposed by Her Majesty's Government might also be improved, and believed that, with sufficient time, an agreement could be come to satisfactory to both countries, which have the same object.

On the same night you communicated to me a telegraphic message from Mr. Fish, stating that "it is not believed that there is any such difference of object between the two Governments in the definition and limitation which each desires to place upon the liability of a neutral as to prevent an agreement on the language in which to express it, if time be allowed for an exchange of views by some other means than the telegraph," and that it appeared to the President that the form of Article last proposed by Her Majesty's Government left a large class of very probable cases unprovided for, and that he held (with reference to an observation in my letter to you of the 28th of May) "that the results of bad faith or willful misconduct toward either of the two governments would never be the subject of pecuniary compensation."

Her Majesty's Government, in their earnest desire to meet the views of the Government of the United States, thereupon made the proposal contained in my letter to you of the 5th instant, the effect of which is to leave the Article as proposed by the Senate, with the addition merely of some few words of definition, which, if the intention of the Senate was that which Her Majesty's Government have been willing to believe, (though they think it insufficiently expressed,) do not in any way affect it in principle, viz: "The remote or indirect losses mentioned in this agreement, being losses arising remotely or indirectly, and not directly, from acts of belligerents," and of a declaration as to acts of willful violation of international duties, which might either be inserted in the Article or made at the time of the exchange of ratifications.

Having learnt, on the 7th instant, that the Government of the United States entertained objections to the use of the expression "acts of belligerents," Her Majesty's Government informed you that they were willing to change it to "acts of war."

Her Majesty's Government believe, therefore, that they have met all the objections, so far as they have been informed of them, which have been from time to time advanced to the suggestions which they have made, and that this recapitulation of the negotiation shows that unless Her Majesty's Government have erred in their view of the probable intention of the Senate, the two Governments are substantially agreed, or that, if there is any difference between them in principle, it is reduced to the smallest proportions.

On the other hand, the objections which Her Majesty's Government entertain and have expressed to the language of the amendments made by the Senate, are founded upon reasons to which they attach the greatest importance, though they think it possible that the Senate did not intend to use that language in the sense which, according to the view of Her Majesty's Government, the words properly bear.

The Government of the United States have stated, in the telegraphic message from Mr. Fish to which I have already referred, that there are some cases not provided for in the words suggested by Her Majesty's Government on the 30th of May. If the Government of the United States are of opinion that these cases are not covered by the last proposed form of Article, and will state what are the cases in question, Her Majesty's Government cannot but think that the two Governments might probably agree upon a form of words which would meet them, without being open to the objections which they have felt to the wording of the Article as proposed by the Senate. Her Majesty's Government have never put forward their words as an ultimatum, and they will be willing to consider, at the proper time, other words, if an adjournment is agreed upon.

I have much pleasure in taking advantage of the present occasion to request you to convey to the Government of the United States the appreciation by Her Majesty's Government of the frank and friendly declaration contained in your letter to me of the 6th instant, respecting the last paragraph of the draught Article.

Her Majesty's Government had never supposed that the Government of the United States had differed from Her Majesty's Government in the sense attached to that portion of the Article, but they look upon the declaration made in your letter as an additional proof of the anxiety, which they are confident is shared by both Governments, of bringing the negotiation to an honorable and successful issue.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

GRANVILLE.

No. 105.

Mr. Fish to General Schenck.

[Telegram.]

DEPARTMENT OF STATE,
Washington, June 13, 1872.

Telegraph and write to Davis, Hotel Beau Rivage, Geneva, as follows:

See my telegrams to Schenck of second and ninth June. If arguments are filed in good faith, without offensive notice, we will assent to their motion for adjournment.

FISH.

[From British Blue Book "North America," No. 10, (1872,) p. 2.]

No. 106.

Earl Granville to Lord Tenterden.

FOREIGN OFFICE, *June* 12, 1872.

MY LORD: Should the Arbitrators inquire for how long a period the adjournment requested in the note which you are instructed in my other dispatch of this day's date to present to them, is desired, you should state that Her Majesty's Government understand that in order to afford time for the consideration of a supplementary convention by the Senate in the session commencing in December, it would be requisite that the adjournment should be for a period of eight months, with power for the Arbitrators to meet at any earlier date, upon being convened for that purpose by the secretary, on the joint request in writing of the Agents of the two Governments.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 10, (1872,) p. 2.]

No. 107.

Earl Granville to Lord Tenterden.

FOREIGN OFFICE, *June* 12, 1872.

MY LORD: Sir Roundell Palmer having consented, at the request of Her Majesty's Government, to attend the meeting of the Tribunal of Arbitration on the 15th instant as Her Majesty's Counsel, I have to instruct you to be guided by his advice in all your proceedings.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 10, (1872,) p. 2.]

No. 108.

Earl Granville to Lord Tenterden.

FOREIGN OFFICE, *June* 12, 1872.

MY LORD: If any circumstances not provided for should occur while you are endeavoring to obtain an adjournment according to your instructions, you will telegraph the particulars to me and ask for instructions.

I am, &c.,

GRANVILLE.

[From British Blue Book "North America," No. 10, (1872,) p. 2.]

No. 109.

Lord Tenterden to Earl Granville.

GENEVA, *June* 14, 1872. (Received June 21.)

MY LORD: I have the honor to report that I arrived here this morning, in company with the Lord Chief Justice, Sir R. Palmer, Mr. Sanderson, Mr. Lee Hamilton, and Mr. Langley.

Count Sclopis, Baron Itajuba, Mr. Adams, and Mr. Bancroft Davis, together with the United States Counsel, Mr. Evarts, Mr. Cushing, and Mr. Waite, are here, and M. Staempfli is expected to arrive this evening or to-morrow morning.

The meeting of the Tribunal has been fixed for 12 o'clock to-morrow, the 15th instant, in pursuance of the resolution adopted on the 15th of December last.

I am, &c.,

TENTERDEN.

No. 110.

Mr. Davis to Mr. Fish.

[Telegram.]

GENEVA, *June* 15, 1872. (Received at 6.30 p. m.)

Our argument presented. Tenterden presents note in form almost identical with Granville's note of 10th to Schenck, of which you have copy, and says he is instructed to withhold British argument. Tribunal adjourns till Monday for consultation on our side.

DAVIS.

No. 111.

Mr. Fish to Mr. Davis.

[Telegram.]

DEPARTMENT OF STATE,
Washington, June 18, 1872.

If there is to be an adjournment, let it be not beyond first January, so as to allow time for a Treaty, if one be agreed upon, to be submitted to the Senate in December, and thereafter for the necessary legislation respecting fisheries, assessors, &c. The President sees no objection to such adjournment, if asked for by the defendants, and nothing objectionable shall have been presented. You and Counsel will understand, and, if necessary, can say, that there can be no extra session of the Senate called; and there will be no extra session in March.

FISH.

No. 112.

Mr. Davis to Mr. Fish.

[Telegram.]

GENEVA, *June* 19, 1872. (Received 4.50 p. m.)

Tribunal will this morning make declaration reciting British motion for adjournment, and reasons given for making it, namely, the differences between the Governments as to competency of Tribunal to determine the three classes of indirect claims, and then continues:

> The Arbitrators do not propose to express or imply any opinion upon the point thus in difference between the two Governments as to the interpretation or effect of the Treaty, but it seems to them obvious that the substantial object of the adjournment must be to give the two Governments an opportunity of determining whether the claims in question shall or shall not be submitted to the decision of the Arbitrators, and that any difference between the two Governments on this point may make the adjournment unproductive of any useful effect, and after a delay of many months, during which both nations may be kept in a state of painful suspense, may end in a result which it is to be presumed both Governments would equally deplore, that of making this arbitration wholly abortive. This being so, the Arbitrators think it right to state that after the most careful perusal of all that has been urged on the part of the Government of the United States in respect of these claims, they have arrived, indi-

vidually and collectively, at the conclusion that these claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations; and should, upon such principles, be wholly excluded from the consideration of the Tribunal in making its award, even if there were no disagreement between the two Governments as to the competency of the Tribunal to decide thereon. With a view to the settlement of the other claims, to the consideration of which by the Tribunal no exception has been taken on the part of Her Britannic Majesty's Government, the Arbitrators have thought it desirable to lay before the parties this expression of the views they have formed upon the question of public law involved, in order that, after this declaration by the Tribunal, it may be considered by the Government of the United States whether any course can be adopted respecting the first-mentioned claims which would relieve the Tribunal from the necessity of deciding upon the present application of Her Britannic Majesty's Government.

DAVIS.

No. 113.

Mr. Davis to Mr. Fish.

[Telegram.]

GENEVA, *June*, 19, 1872. (Received at 6 p. m.)

The Counsel write me as follows:

> We are of the opinion that the announcement this day made by the Tribunal must be received by the United States as determinative of its judgment upon the question of public law involved, upon which the United States have insisted upon taking the opinion of the Tribunal. We advise, therefore, that it should be submitted to, as precluding the propriety of further insisting upon the claims covered by this declaration of the Tribunal, and that the United States, with a view of maintaining the due course of the arbitration on the other claims without adjournment, should announce to the Tribunal that the said claims covered by its opinion will not be further insisted upon before the Tribunal by the United States, and may be excluded from all consideration by the Tribunal in making its award.

DAVIS.

No. 114.

Mr. Fish to General Schenck.

[Telegram.]

DEPARTMENT OF STATE,
Washington, June 22, 1872.

Send following by telegraph, and also by mail, without delay, to Davis, Geneva:

[*Mr. Fish to Mr. Davis.*]

Your telegram of 19th informs me that the Tribunal has made a declaration stating that the Arbitrators have arrived at the conclusion that a class of the claims set forth in the Case presented in behalf of the United States do not constitute, upon the principles of international law applicable to such cases, a good foundation for an award of compensation or computation of damages between nations, and should, upon such principles, be wholly excluded from the consideration of the Tribunal in making up its award.

You also inform me that the Counsel of this Government before the Tribunal at Geneva have advised in writing that they are of opinion that the announcement thus made by the Tribunal must be received by the United States as determinative of its judgment upon the question of public law involved, upon which the United States have insisted upon taking the opinion of the Tribunal; that the Counsel advise, therefore, that this judgment be submitted to as precluding the propriety of further insisting upon the claims covered by the declaration of the Tribunal; and that the United States, with a view of maintaining the due course of arbitration on the other claims, without adjournment, should announce its opinion that the claims referred to by the Tribunal will not be further insisted upon by the United States, and may be excluded from its consideration by the Tribunal in making its award.

I have laid your telegrams before the President, who directs me to say that he accepts the declaration of the Tribunal as its judgment upon a question of public law, which he had felt that the interests of both Governments required should be decided, and for the determination of which he had felt it important to present the claims referred to for the purpose of taking the opinion of the Tribunal.

This is the attainment of an end which this Government had in view in the putting forth of those claims. We had no desire for a pecuniary award, but desired an expression by the Tribunal as to the liability of a neutral for claims of that character. The President, therefore, further accepts the opinion and advice of the Counsel as set forth above, and authorizes the announcement to the Tribunal that he accepts their declaration as determinative of their judgment upon the important question of public law upon which he had felt it his duty to seek the expression of their opinion; and that in accordance with such judgment and opinion, from henceforth he regards the claims set forth in the Case presented on the part of the United States for loss in the transfer of the American commercial marine to the British flag, the enhanced payment of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war, and the suppression of the rebellion, as adjudicated and disposed of; and that, consequently, they will not be further insisted upon before the Tribunal by the United States, but are henceforth excluded from its consideration by the Tribunal in making its award.

FISH.

No. 115.

Mr. Davis to Mr. Fish.

[Telegram.]

GENEVA, *June* 25, 1872. (Received at 8 p. m.)

Counsel write me regarding the statement sent Schenck for you to-day:

> We concur in the form of communication to the Tribunal of the action of our Government which you propose to make.

DAVIS.

No. 116.

General Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 26, 1872. (Received at 11 a. m.)

Davis telegraphs as follows:

[*Mr. Davis to Mr. Fish.*]

At the Conference convened this day [June 25] by Count Sclopis, I said the declaration made by the Tribunal, individually and collectively, respecting the claims presented by the United States for the award of the Tribunal for, first, the losses in the transfer of the American commercial marine to the British flag; second, the enhanced payment of insurance; and third, the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion, is accepted by the President of the United States as determinative of their judgment upon the important question of public law involved. The Agent of the United States is authorized to say that consequently the above-mentioned claims will not be further insisted upon before the Tribunal by the United States, and may be excluded from all consideration in any award that may be made. To this Lord Tenterden replied: "I will inform my Government of the declaration made by the Arbitrators on the 19th instant, and of the statement now made by the Agent of the United States, and request their instructions." The Tribunal then adjourned to Thursday at 11, to enable him to communicate by telegraph with his Government.

SCHENCK.

No. 117.

Mr. Schenck to Mr. Fish.

[Telegram.]

LONDON, *June* 27, 1872. (Received at 12 m.)

Davis telegraphs me to send you the following:

[*Mr. Davis to Mr. Fish.*]

Lord Tenterden will say this day to Tribunal, Her Majesty's Government finding the communication on the part of the Arbitrators recorded in the Protocol of their proceedings of the 19th instant nothing to which they cannot assent consistently with their view of the interpretation and effect of the Treaty of Washington, hitherto maintained by them; and being informed of the statement made on the 25th instant by the Agent of the United States, that the several claims particularly mentioned in that statement will not be further insisted upon before the Tribunal by the United States, and may be excluded from all consideration in any award that may be made, and assuming that the Arbitrators will, upon such statement, think fit now to declare that the said several claims are, and from henceforth will be, wholly excluded from their consideration, and will embody such declaration in their Protocol of this day's proceedings, they have instructed the undersigned, upon this being done, to request leave to withdraw the application made by him to the Tribunal on the 15th instant for such an adjournment as might enable a supplementary convention to be concluded and ratified between the High Contracting Parties, and to request leave to deliver the printed argument now in the hands of the undersigned, which has been prepared on the part of Her Britannic Majesty's Government, under the fifth Article of the Treaty. With reference to the other claims to the consideration of which, by the Tribunal, no exception has been taken on the part of Her Majesty's Government.

SCHENCK.

No. 118.

Mr. Davis to Mr. Fish.

[Telegram.]

GENEVA, *June* 27, 1872. (Received at 3.45 p. m.)

British argument filed. Arbitration goes on.

DAVIS.

[From British Blue Book "North America," No. 10, (1872,) p. 12.]

No. 119.

Earl Granville to Lord Tenterden.

FOREIGN OFFICE, *July* 1, 1872.

MY LORD: I have received and laid before the Queen your several lispatches reporting your proceedings at Geneva, between the 14th and 28th ultimo, and I have to convey to you Her Majesty's entire approval of the able and prudent manner in which you have acquitted yourself n the discharge of the important and delicate duties with which you were intrusted.

Her Majesty appreciates to its full extent the value of the assistance which Sir Roundell Palmer was good enough to afford, at no small personal sacrifice, in the solution of a question of such importance; and, although I shall convey directly to Sir Roundell Palmer the thanks of Her Majesty's Government, I think it right to place on official record Her Majesty's gracious sentiments, and you will have the goodness to furnish him with a copy of this dispatch.

I should not do justice to the feelings of Her Majesty's Government f I did not at the same time acknowledge the conciliatory spirit shown by your American colleagues.

And, although the existence of such good feeling, on the part of the Agents of the two countries, facilitated the deliberations of the Arbitrators in dealing with the question which first engaged their attention, it is still the duty of Her Majesty's Government to acknowledge the thoughtfulness and wisdom which caused them to adopt and act on the conclusions at which they spontaneously arrived.

I am, &c.,

GRANVILLE.

No. 120.

General Schenck to Mr. Fish.

No. 290.] LEGATION OF THE UNITED STATES,
London, August 12, 1872. (Received August 23.)

SIR: On Saturday, the 10th instant, the day on which Parliament was prorogued, I did not receive official copies of the Queen's speech in time for the mail of that day. I forward now, herewith, two copies.

You will observe what Her Majesty is made to say in regard to the declaration of the Arbitrators at Geneva on the subject of the claims for indirect losses; that it is entirely consistent with the views which she announced at the opening of the session. On the contrary, the ground taken in the Queen's speech in February last was, that the United States had put forward certain claims which Her Majesty's Government held not to be within the scope of the Treaty. But the Arbitrators studiously avoided giving any opinion on that point, and confined themselves to an expression of opinion, in effect by the Tribunal, that without reference to the question of admissibility or inadmissibility of such claims under the Treaty, they could not, under the principles of public law, be considered in making up an award, because of their remote or consequential character.

I have, &c.,

ROBT. C. SCHENCK.

[Inclosure in No. 120.]

Extract from Her Majesty's most gracious speech.

MY LORDS AND GENTLEMEN: The time has now arrived when you may properly relinquish the performance of your arduous duties for a term of repose, which has been honorably earned by your devoted assiduity.

I rejoice to inform you that the controversy which had arisen between my Government and the Government of the United States, in consequence of the presentation of the American claims for indirect losses under the Treaty of Washington, has been composed by a spontaneous declaration of the Arbitrators entirely consistent with the views which I announced to you at the opening of the session. In concurrence with your action on the part of the United Kingdom, the Parliament of Canada has passed the acts necessary to give effect to the Treaty within the Dominion. All the arrangements contemplated by that instrument are, therefore, now in progress, and I reflect with satisfaction that the subjects with which it has dealt no longer offer any impediment to a perfect concord between two kindred nations.

* * * * * * * * *

No. 121.

Mr. Fish to General Schenck.

No. 260.]

DEPARTMENT OF STATE,
Washington, August 31, 1872.

SIR: I have the pleasure to acknowledge your No. 290, inclosing two copies of the Queen's speech on the prorogation of the two Houses of Parliament, on the 10th instant.

The telegram had enabled the public journals to bring to my notice this speech, or at least that part of it where Her Majesty is made to say that the declaration of the Arbitrators at Geneva is entirely consistent with the views which she announced to Parliament at the opening of the session, and I had observed what you comment upon, that Her Majesty in her speech at the opening of the session had said, "In the case so submitted on behalf of the United States, large claims have been included which are understood on my part not to be within the province of the Arbitrators." A very long correspondence ensued in which this Government contended, in effect, that all the claims presented were within the proper jurisdiction of the Tribunal, and that they could be disposed of only upon the judgment, or award, of the Arbitrators. At their fifth conference, on 19th June, Count Sclopis, as President of the Tribunal, on behalf of all the Arbitrators, made a statement, in the course of which he said, "The Arbitrators think it right to state that after the most careful perusal of all that has been urged on the part of the Government of the United States in respect of these claims," (referring to those which Her Majesty had thought were not within the province of the Tribunal,) "they have arrived, individually and collectively, at the conclusion that these claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation, or computation of damages between nations."

The President of the Tribunal, in behalf of all the Arbitrators, officially states that they had given "the most careful perusal" to "all that had been urged in respect of the claims"—this looks very much like taking cognizance of them;—that after such perusal they had not only individually but "collectively" arrived at a "conclusion;" the "collective" action of a Board must be official action.

The Tribunal then, after taking cognizance of these claims, officially pronounces the opinion that, upon the principles of international law applicable to such cases, they do not constitute good foundation for an award of compensation or computation of damages between nations. The President could regard this only as a definitive expression—a judgment of the Tribunal upon the question of public international law applicable to such cases, deciding that claims for remote or consequential injuries do not constitute good foundation for compensation in damages between nations.

At the sixth conference (25 June) the Agent of the United States stated that the declaration thus "made by the Tribunal is accepted by the President of the United States as determinative of their judgment upon the important question of public law involved," and "that, consequently, the above-mentioned claims will not be further insisted upon before the Tribunal by the United States." They had been insisted upon before the Tribunal, but "will not be *further* insisted upon." The British Agent then said that he would inform his Government of the declaration made by the Arbitrators on the 19th, and of the statement now made by the Agent of the United States, and request their instructions.

Thus advised that the President accepted the declaration of the Tribunal as determinative of "their judgment upon the important question of public law involved," and that the United States would not *further* insist upon these claims before the Tribunal, the British Agent, acting under instructions from his Government, assumed that the Arbitrators would, upon such statement, think fit now to declare that the said several claims *are, and from henceforth will be*, excluded from their consideration, and would embody such declaration in their Protocol of that day's proceedings. Upon this motion (as it would be called in a court of law) of the British Agent, Count Sclopis, the presiding Arbitrator, on behalf of all the Arbitrators, then entered final judgment, declaring "that the said several claims for indirect losses mentioned in the statement made by the Agent of the United States, on the 25th instant, and referred to in the statement just made by the Agent of Her Britannic Majesty, *are, and from henceforth shall be*, wholly excluded from the consideration of the Tribunal, and directed the secretary to embody this declaration in the Protocol of this day's proceedings."

The Protocols thus show that these claims, which Her Majesty was made to say to Parliament, on the 6th of February, were "understood, on her part, not to be within the province of the Arbitrators," were by them taken into consideration; that the Tribunal gave "the most careful perusal" to all that was urged on their behalf by the United States; that it pronounced its collective opinion upon their legal inadmissibility under the principles of international law as the foundation of an award of damages; that the United States declared their acceptance of this opinion as the judgment of the Tribunal upon the question of public law involved, and expressed their willingness not to *further* insist upon the claims before the Tribunal; that the Arbitrators, upon the suggestion ot the British Agent, declared the claims now and from henceforth excluded from their consideration, and embodied in their Protocol the declaration requested by the British Agent.

If the claims had not been within the consideration of the Tribunal, of what necessity the request to ask a formal order that they be "from henceforth wholly excluded?"

If they were not within the province of the Arbitrators, why should the Arbitrators give them consideration, or give the most careful perusal to what was urged in respect to them; or why should they express their individual and collective opinion with regard to them?

If not within "the province of the Arbitrators," why should the British Government, through instructions to its Agent, and upon the statement of the Agent of the United States that they will not be further insisted upon before the Tribunal, ask for the entry of an order upon the Protocol that they be, "from henceforth, wholly excluded from all consideration?"

Her Majesty's speeches to Parliament, although they may justify interpretation or comment by other Powers, do not require it in all cases.

However inconsistent the declaration of the Arbitrators may in reality be with the view announced by Her Majesty to Parliament at the opening of the session, I do not see that there is any occasion to disturb the self-complacency of the expression with which the Ministry, through the Crown, assure the Parliament that antagonisms are agreements.

The Arbitrators of Geneva have requested that secrecy be observed as to their transactions. I am not fully aware how far this request is intended to apply, but as I have quoted from their proceedings, you will, for the present at least, give no publicity to the citations or references I have made to their decisions further than as they may have reached you through other channels.

I am, &c.,

HAMILTON FISH.

No. 122.

Sir E. Thornton to Mr. Fish.

WASHINGTON, *October* 17, 1872. (Received October 17.)

SIR: The Tribunal of Arbitration at Geneva, in the matter of the differences between Her Majesty and the United States of America, on which it was appointed to adjudicate, having brought its labors to a close, and pronounced, on the 14th ultimo, its final award, Lord Granville has informed me that it has become his duty, in obedience to the Queen's commands, to instruct me to convey to the President Her Majesty's acknowledgments for the care and attention which Mr. Adams, the Arbitrator appointed by the President, bestowed on the important matter with which he was called upon to deal, and Her Majesty's high appreciation of the ability and indefatigable industry which that distinguished statesman displayed during the long-protracted inquiries and discussions in which he has been engaged.

I am also instructed to submit to the President that he would be pleased to make known her Majesty's sentiments, as herein expressed, to Mr. Adams.

I shall therefore feel much obliged to you if you will convey to the President the substance of the instructions which I have received, for the purpose of communicating which I shall do myself the honor of waiting upon him personally.

I have, &c.,

EDWD. THORNTON.

No. 123.

Mr. Fish to Sir E. Thornton.

WASHINGTON, *October* 22, 1872.

SIR: I have the honor to acknowledge the receipt of your note of the 17th instant, in which, after reference to the fact that the Tribunal of Arbitration at Geneva, in the matter of differences between the United States of America and Her Majesty, had brought its labors to a close and had pronounced its final award, you inform me of instructions from your Government to convey to the President Her Majesty's acknowledgments for the care and attention which Mr. Adams, the Arbitrator appointed by the President, bestowed on the important matter with which he was called upon to deal, and Her Majesty's high appreciation of the ability and indefatigable industry which that distinguished statesman displayed during the long-protracted inquiries and discussions in which he had been engaged. Also that you are instructed to submit to the President that he would be pleased to make known Her Majesty's sentiments, as expressed in your note, to Mr. Adams.

I have communicated the substance of your note to the President, who directs me to express the gratification with which he receives the intelligence of Her Majesty's appreciation of the manner in which Mr. Adams, whom he had named as one of the Arbitrators, had discharged the high duties intrusted to him.

This expression which Her Majesty has been pleased to cause to be communicated will be made known to Mr. Adams immediately on his return to the United States, and will doubtless be appreciated by him as a recognition alike grateful and honorable of his efforts to act on the High Tribunal with the dignity and impartiality becoming a Judge.

I have, &c.,

HAMILTON FISH.

No. 124.

No. 342.] *General Schenck to Mr. Fish.*[1]

LEGATION OF THE UNITED STATES,
London, February 7, 1873.

SIR: With reference to my No. 341, I have the honor to inclose herewith full reports from the Times and the Standard of this morning of the proceedings in both Houses of Parliament last evening.

I have, &c.,

ROBT. C. SCHENCK.

[Inclosure.]

Extract from the Debates in the House of Commons as reported in the "Times" of February 7, 1873.

Mr. GLADSTONE. * * * Before parting with the portion of the speech of my right honorable friend to which I have referred, I may say I think he is in error when he states that the consent to what he terms an apology on our part—that is to say, to an express-sion of regret for the fact of the escape of the Alabama irrespective of all questions of right or wrong connected with it—was a condition precedent to the negotiation with America.

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[1] This correspondence, which has taken place since the President's Message of December 2, is added to that then sent to Congress, with which it is connected historically.

Mr. HORSMAN. What I said was to the Arbitration.

Mr. GLADSTONE. I think it was not. If my right honorable friend refers to the papers, he will find that statement would not be borne out.

Mr. HORSMAN. It occurred at Washington.

Mr. GLADSTONE. Well, if it occurred at Washington it was not in the nature of a condition precedent. The basis of the whole proceeding was to arrive at an arbitration, and, therefore, the request for an explanation or expression of regret on our part was not a condition precedent to that proceeding. * * *

No. 125.

Mr. Fish to General Schenck.

No. 329.] DEPARTMENT OF STATE,
Washington, February 20, 1873.

SIR: I have your No. 342 with the debate in Parliament on the Queen's speech. It may be not of much importance at this time, in an international point of view, to correct what seems to be an error on the part of Mr. Gladstone, when in his discussion with Mr. Horsman he is reported as saying that the expression of regret by Great Britain contained in the Treaty of Washington "was not in the nature of a condition precedent." The facts, I think, will scarce sustain Mr. Gladstone's denial, and, without a desire to provoke any discussion, it may be well to place on the archives of your legation some facts in connection with this question.

The appointment of the Joint High Commission was preceded by informal negotiations between Sir John Rose and myself. The first interview between us took place on the 9th January, 1871, when Sir John introduced the subject by saying "he had been requested by the British Government, informally and unofficially," &c., "to ascertain what could be done for settling the pending questions between the two Governments, and that he was authorized to say that if it would be acceptable to the Government of the United States to refer all those subjects to a joint commission, framed something upon the model of the commission which made the treaty of Ghent, he could say that the British Government were prepared to send out such a commission on their part." At this interview I insisted, among other things, that Great Britain should, in some form, admit her liability, at least with respect to the Alabama. "*and should couple the statement with an expression of regret for what had taken place to disturb the relations of the two countries;* that less than this the United States ought not to be, *and would not be, satisfied with.*"

Several interviews took place between the 9th and 24th January. Sir John Rose submitted a paper, which was copied and returned to him. A counter paper was prepared, and on the 24th January it was read to Sir John, but, for reasons stated to him, was not *formally* given to him; it was, however, fully discussed, and he was furnished confidentially with a copy with the understanding that it was a crude paper, and did not represent my views, except so far as it agreed with the purport of the conversation then had. During the discussion with him on 24th January, I said, with regard to what the paper contained relating to the admission of liability on the Alabama claims, that "on consultation, I had concluded that it was not best to make that specific statement, but instead thereof, to say that *it would be essential that* some important concessions should be made as to that class of claims, *and some expression of regret at what had been done.*" My language in the paper was: "It is necessary, and due to candor, to note that, unless Great Britain is willing to, and to express some kind words of regret for past occurrences, it would be better to take no steps."

Sir John gave me a copy of a telegram which he sent to Lord Granville, bearing date January 24, in which occurs the following sentence: "The Government hope, also, that in the course of the Protocols some expressions of regret not inconsistent with the dignity of England, nor involving admission of national wrong, may be made." We had now progressed so far as to render the appointment of the Joint Commission a strong probability, and I desired *official assurance that the British Government would make the expression of regret,* without which we should have proceeded no further. I was then furnished a copy of a telegram from Earl Granville to Sir Edward Thornton, dated 25 January, 1871, saying: "We adhere to arbitration as to the point of international law on the Alabama question, *but we should express regret at the fact of escape and depredations;* we do not object to points properly selected for arbitration," &c., &c.

Having this assurance, the notes between Sir Edward Thornton and myself, preliminary to the appointment of the Commission, were passed.

I am, &c.,

HAMILTON FISH.

No. 126.

General Schenck to Mr. Fish.

No. 353.] LEGATION OF THE UNITED STATES,
London, March 6, 1873.

SIR: The receipt of your No. 329, correcting the error of Mr. Gladstone in his statement made in Parliament, that the expression of regret by Great Britain contained in the Treaty of Washington "was not in the nature of a condition precedent," has already been acknowledged.

You say that, without a desire to provoke any discussion, it may be well to place in the archives of this legation some facts in connection with the question. And I do not understand that you deem it necessary to have me bring your dispatch on the subject, at present, to the notice of Her Majesty's Government. But I cannot forbear, before filing it away, to express to you my great satisfaction that you have thus made authentic record of the facts on this point which preceded the negotiation of the Treaty.

Although not needed as confirmatory evidence, I venture to set down also my testimony on the subject.

Being at Washington, holding my appointment as Minister to Great Britain, but instructed by the President not to proceed to my post, but to remain and await the issue of the unofficial preliminary negotiations between you and Sir John Rose, because in case of agreement between the two Governments to create a Joint Commission I was to be nominated one of the Commissioners on the part of the United States, I had the honor to be confidentially informed and consulted during the preparatory steps. I well remember that, from the beginning, you required official assurance that the British Government would make expression of regret for what had taken place in regard to the Alabama and other cruisers, declining to pass the preliminary notes with Sir Edward Thornton until this, among other things, was distinctly understood.

I am, &c.,

ROBT. C. SCHENCK.

THE AMERICAN COMMISSIONERS

AND

THE STATEMENT

OF

SIR STAFFORD NORTHCOTE,

AT EXETER,

IN RELATION TO AN

ALLEGED PROMISE OF EXCLUSION OF THE INDIRECT CLAIMS OF THE UNITED STATES.

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SIR STAFFORD NORTHCOTE'S DECLARATION.

No. 1.

A passage from a speech of Sir Stafford Northcote, delivered on the 17th day of May, 1872, before the Exeter Chamber of Commerce, as published in the Pall Mall Gazette of May 18.

"Two questions have been raised: one a personal question, as to what was the understanding between the Commissioners at the time the Treaty was negotiated; and, second, a general one as to the claims for consequential damages, or indirect claims. With regard to the personal question I will only say this—that we, the Commissioners, were distinctly responsible for having represented to the Government that we understood a promise to be given that these claims were not to be put forward by the United States. But if we are to maintain that position, we of course must be brought into painful relations, and perhaps painful questions, between ourselves and our American colleagues upon that Commission.

No. 2.

Extract from the London Times of May 20, 1872, *giving a report of the speech of Sir Stafford Northcote at Exeter.*

SIR STAFFORD NORTHCOTE ON THE ALABAMA NEGOTIATIONS.

We gave a brief telegraphic summary in the Times of Saturday of a speech delivered by Sir Stafford Northcote at Exeter. The right honorable gentleman spoke on several topics of interest, the chief of which was the question of the Alabama claims. We subjoin a fuller report of this portion of his speech. "I need not tell you," he said, "that this has been a year of great anxiety and of great trouble to us all connected with the questions raised under that Washington Treaty. And perhaps you will forgive my saying that to myself personally the time we have been going through has been of very considerable anxiety, [hear, hear;] not the less so because until within the last day or two I have felt myself in a position, and we who were the Commissioners last year have felt ourselves in a position in which it was our duty to hold our tongues. And though holding one's tongue is often very agreeable and very right, there are occasions on which it imposes and involves considerable sacrifice. But I think the country has generally appreciated the motives which have led to our silence. [Hear, hear.] We have felt that it was far better that we should submit even to misrepresentation, or at all events to suspicion, which, we think, we could have cleared away if we could speak, than that we should say anything which could by any possibility mar the settlement to which we are anxiously looking. [Hear, hear.] But the matter has now, this week, passed into a stage which places us in a somewhat different position. It does not, indeed, absolve us from the necessity of great caution in speaking of anything of a personal character; but it does place us in a position in which we may speak with freedom in reference to the great international interests concerned. Why I say our position personally has been one of great delicacy and embarrassment is this: Two questions have been raised, one the personal question as to what was the understanding between the Commissioners at all events, and perhaps between the two Governments, at the time the Treaty was concluded; the other, as to the general merits of the question which has been raised with regard to what are called consequential damages, or the indirect claims. *Now with regard to the personal question I will only say this—that we, the Commissioners, were distinctly responsible for having represented to the Government that we understood a promise to be given that these claims were not to be put forward, and were not to be submitted to arbitration. That being so, we are, of course, brought into painful relations with, and painful questions arise between ourselves and our American colleagues upon that Commission.* It would have been most unjustifiable if, while the matter was under discussion, we had allowed any desire to make out our own case in this matter to interfere with a great international settlement going on. Whether the time will ever come for speaking fully upon the matter, I do not know, and I comparatively little care. What I am anxious for is that a reasonable arrangement should be come to which shall secure to both countries—and I will go as far as to say to the world at large—the advantages which we promised ourselves in the conclusion of that Treaty. Now, while the question was one merely between the two Governments it was very difficult to treat it *without entering on that personal question*, but we now see it has passed beyond the two Governments. An arrangement has been provisionally come to, I think we may say, between the two Governments, which is now awaiting its sanction by the Senate of the United States, and which, if accepted by them, must come before the Parliament and the people of this country, with a view to its ratification by us also, and I therefore speak with some litle freedom, because I feel that I can do so without raising the other class of question to which I refer. Nothing can be more satisfactory, I think, than the attitude which the people—I speak of the great public of both countries—have taken since the difficulty has arisen. There was very great satisfaction in America, and I believe that on the whole I may say there was great satisfaction in England also, when this Treaty was concluded last year. At all events, both countries believed that a settlement of the troublesome question had been arrived at; that principles were agreed upon that were likely to be of very great importance for the future. Suddenly, and most unexpectedly to the people of this country, and, as I am perfectly convinced, equally unexpectedly to the people of the United States, a difficulty was raised which seemed likely to overthrow the whole of the settlement. Nothing, I think, can have been more honorable to the public of both countries than the manner in which, in the face of that great disappointment, they have behaved.

There has been no disposition to irritate, there has been no disposition to embarrass the question; on the contrary, there has been an anxious desire shown on both sides to endeavor, if possible, to undo this knot and to arrive at a satisfactory conclusion. And though I do not wish to take credit to the late Commission for what may not belong to them, still one cannot help thinking that the manner in which the negotiation was conducted on the part of our Government, and the manner in which it was conducted on the other side, has had something to do in bringing about a better feeling between the two countries than previously existed. I firmly believe that the natural irritation which pervaded a large proportion of the United States immediately after the terrible civil war through which they had passed was greatly allayed by the proceedings of last year, and even if, which I trust may not be the case, those arrangements should unhappily fall through, I believe that the disposition which has been shown toward a friendly settlement will not be without its fruits. But with regard to the prospects of a settlement, I wish only to say this—that I have great confidence that the spirit which has animated both peoples will animate the authorities also. [Hear, hear.] The Treaty of last year was arrived at under circumstances of great difficulty, arising from the peculiar relation of the United States Senate to the Government; and those difficulties were enhanced by the fact that the Treaty embraced several distinct matters, and also by the consideration that the Senate had, on former occasions, rejected a Treaty for the settlement of the Alabama claims. All this made the negotiation extremely difficult and delicate. I am bound to say the spirit in which those difficulties were dealt with by the people, by the Government, and by the Senate of the United States was a spirit very encouraging, as if they were disposed to prefer great international considerations to the smaller and more personal considerations to which I have referred. And they dealt with this question in a broad and statesmanlike manner, which, I trust, augurs well for the future settlement of this question. It must be felt by us all that it is of the highest importance to the interests, not only of commerce, but of peace and tranquillity throughout the world, that these questions which have been raised should receive a satisfactory solution; that minor questions, such as national delicacy and national pride, even—although I am the last who would wish to see national honor in the least degree tainted or weakened—should not be allowed altogether to put out of our sight those very great, broad, international questions which are concerned in a settlement of this kind. And my firm belief is, whether we arrive at a settlement now, or whether this matter should be postponed, and it should be for the future to take it up again under happier auspices, that we have now arrived at a stage at which both countries are prepared to give proper weight to those great questions to which I have referred, and in which no petty considerations will be allowed to interfere with the settlement. [Hear, hear.] I do not speak—you would not expect me to speak—of the particular arrangement now proposed; but I do believe, if the matter is treated by the Senate in the same spirit as they dealt with our negotiations last year, we shall, before long, see such a settlement of it as will secure to the world those fruits which we had so earnestly hoped and so confidently believed we had secured by our negotiations of last year." [Applause.]

No. 3.

Extract from an instruction of Mr. Fish to General Schenck, June 3, 1872.

No. 216.] **Department of State,**
Washington, June 3, 1872.

Sir: * * * * * * *

The communications which the British High Commissioners may have made to their Government, either pending the negotiation or since, can scarcely be urged with seriousness upon this Government for acceptance in the construction of the Treaty. One of those gentlemen is reported as saying, recently, "that we, the (British) Commissioners, were distinctly responsible for having represented to the Government that we (they) understood a promise to be given that these claims were not to be put forward, and were not to be submitted to arbitration." He does not say by whom, on what occasion, or in what manner, such promise was made. He involves all his colleagues in the representation made to their Government, that such promise had been made. But this seeking "*aliunde*," outside of the Treaty and of the Protocol, to establish a meaning or to explain its terms, has had the effect, which the honorable baronet who made the declaration anticipated, to raise a "personal question," and I cannot allow this reference made by Lord Granville to the information furnished to Her Majesty's Government by Her High Commissioners to pass without alluding to the representation which Sir Stafford Northcote (one of those Commissioners) says that the Commissioners are responsible for having made to their Government.

In justice to myself and my colleagues on the American side of the Commission, I must take this occasion (the first that has presented itself since I have seen the speech of Sir Stafford Northcote) to say that no such promise as he states that the British Commissioners represented to their Government, as having been understood by them to be made by the American Commissioners, was in fact ever made. The official communications between the American and the British Commissioners (as you are aware) were all made by or to me as the first named of the American Commissioners.

I never made and never heard of any such promise, or of anything resembling a promise on the subject referred to. None was ever made by me, formally or informally, officially or unofficially; and I feel entire confidence in making the assertion that none of my colleagues ever made any promise or any declaration or statement approaching to a promise on the subject. What may have been the understanding of Sir Stafford Northcote, or of his colleagues, I cannot undertake to say; but that the American Commissioners gave him or them any grounds to understand that such a promise was given as he says they represented to their Government as having been made, I am bound most respectfully but most emphatically to deny. I cannot conceive from what he has imagined it, as the only direct allusion to the three classes of claims (called the "indirect claims") was that made on the part of the American Commissioners on the 8th day of March, and is set forth in the 36th Protocol in the words in which it was made.

The British Government has, in the correspondence which has recently taken place, endeavored to construe the withholding of an estimate of those "indirect claims" in connection with a proposition on behalf of this Government, which was declined by the British Commissioners, into their waiver. I have already discussed that question, and shall not here again enter upon its refutation. The Protocols and the statement approved by the Joint Commission furnish the substantial part of what passed on that occasion. I am at a loss to conceive what representation, outside of the statement made in the 36th Protocol, Sir Stafford Northcote can have made to his Government. He refers to some "personal question," something which, until the time of his address, he and his colleagues had been under official restraint from discussing, but the Protocols and the statement to which I have referred had been before the public, both in Great Britain and in the United States, for nearly a year before his declaration. It is only within a day or two that the journals containing his address have reached me. I have this day addressed a letter to yourself and to each of our colleagues on the Commission, calling attention to Sir Stafford's statement, and in due time may make public the correspondence.

* * * * * * *

I am, sir, your obedient servant,

HAMILTON FISH.

General ROBERT C. SCHENCK, *&c.*, *&c.*, *&c.*

No. 4.

Copy of letter of Mr. Fish addressed to each of the American Commissioners on the Joint High Commission.

DEPARTMENT OF STATE,
Washington, *June* 3, 1872.

MY DEAR JUDGE: I beg to ask your attention to the inclosed extract of an address made by Sir Stafford Northcote to the Exeter Chamber of Commerce, containing an extraordinary charge that a "promise" had been given to the British Commissioners that what are called the "indirect" claims could not be brought forward in the arbitration at Geneva under the Treaty of Washington.

Individually, I never heard of any such promise; as one of the American Commissioners, I never made any promise, nor suspected anything of the kind. I have no recollection of any question of the kind being raised, officially or unofficially.

What may have been the "understanding" of the British Commissioners is not a question on which I propose to enter; it is enough that they, as gentlemen, say that they had a certain understanding. Sir Edward Thornton tells me that he, in common with his colleagues, understood that the "indirect claims" were waived; he further says that his understanding on that point was derived entirely from the presentation made of our complaints and claims on the 8th of March, as set forth in the Protocol, and he disclaims any knowledge or idea of any "promise," or of anything subsequently said on the subject. This is his personal and unofficial statement to me; probably he might feel a delicacy to bear any public testimony on the question.

The charge of Sir Stafford Northcote does not state specifically by whom the promise was made; but as the official communication and intercourse of the British Commissioners was necessarily confined to the

American Commissioners, the imputation of ill-faith, which the charge implies, primarily attaches to the American Commissioners.

I venture, therefore, to bring it to your notice, and shall be pleased to hear from you any statement of your recollection on the subject, or any suggestion on the matter.

I am, my dear judge, very sincerely yours,

HAMILTON FISH.

Hon. SAMUEL NELSON,
Cooperstown, New York.

NOTE.—A similar letter was addressed to General Schenck, Judge Hoar, and Judge Williams, the other American Commissioners. The inclosure mentioned in the letter was the extract from the speech of Sir Stafford Northcote, taken from the Pall Mall Gazette—(No. 1, above.)

No. 5.

Letter of Judge Hoar in answer to Mr. Fish's letter of June 3.

CONCORD, *June* 7, 1872.

MY DEAR SIR: I received last evening your letter of the 3d instant, calling my attention to an extract from a speech of Sir Stafford Northcote before the Exeter Chamber of Commerce, which you inclose. He says that the British Commissioners represented to their Government that they understood a promise to be given that these claims (for consequential damages) were not to be put forward by the United States.

I cannot, of course, undertake to say what any gentleman "understood;" nor does it appear by whom, or in what manner, or on what occasion Sir Stafford "understood" that the promise was given.

I can only say that I never made any such promise, either individually or in conjunction with others; that no such promise was ever made in my hearing or with my knowledge; that I never thought or suspected that any such promise existed, or was understood by any one. On the contrary, I always thought and expected that those claims, though incapable from their nature of computation, and from their magnitude incapable of compensation, were to be submitted to the Tribunal of Arbitration, and urged as a reason why a gross sum should be awarded, which should be an ample and liberal compensation for our losses by captures and burnings, without going into petty details.

Very respectfully and sincerely, yours,

E. R. HOAR.

Hon. HAMILTON FISH.

No. 6.

Letter of Judge Nelson in answer to Mr. Fish's letter of June 3.

COOPERSTOWN, *June* 8, 1872.

MY DEAR SIR: You call my attention to an "extract" from the speech of Sir Stafford Northcote before the Exeter Chamber of Commerce, in which he states that the British Commissioners understood a promise was given by the American Commissioners in the course of the negotiation of the Washington Treaty that consequential damages or indirect claims would not be put forth by the United States under that Treaty.

The "extract" had attracted my attention at the time it first appeared, but I was inclined to regard it as the expression of his understanding, rather than the assertion of a fact.

My very great respect for Sir Stafford, arising from our intercourse during the negotiations, inclined me to this conclusion. My recollection is distinct that no such promise was in fact made; and, further, that the only meeting of the Commissioners at which indirect injury or losses were mentioned was that of the 8th of March, the facts in respect to which are truly set forth in the Protocol.

I have watched the issue of the difficulties that have arisen in the execution of the Treaty with the greatest interest and anxiety, and was very much relieved at what yesterday appeared to be a solution satisfactory to both parties, and which I see is to-day confirmed.

Very truly, yours,

S. NELSON.

HON. HAMILTON FISH,
Secretary of State.

No. 7.

Letter of General Schenck in answer to Mr. Fish's letter of June 3.

LEGATION OF THE UNITED STATES,
London, June 20, 1872.

MY DEAR MR. FISH: I have your letter of the 3d instant, calling my attention to the statement made by Sir Stafford Northcote in a speech at Exeter last month. He took occasion then and there to declare that he and the other British Commissioners, in the negotiations which resulted in the Treaty of Washington, "understood a promise to be given" that what have been known as the indirect claims of the United States were not to be put forward or submitted to arbitration, and that they had so represented to their Government.

I did not fail to note with surprise this statement of Sir Stafford when it was first announced, and still more the manner of it. That you may better understand this, I send you, from the Times, a fuller report of his remarks than is contained in the extract you have inclosed me from the Pall Mall Gazette.

In reply to your appeal to me on the subject, I have no hesitation in saying distinctly and emphatically, as one of the American Commissioners, that if any promise of the kind mentioned by Sir Stafford Northcote was given, I had no knowledge of it whatever; nor do I believe that any such promise was made by my American colleagues of the Joint Commission, or by either of them, individually or collectively.

What might have been the "understanding" of the British Commissioners it is impossible for me to say. Their high character as honorable gentlemen forbids my doubting for a moment the assertion of either of them when he states that such an impression existed in his mind. The American Commissioners can only answer for what they themselves may have said or done to give just or sufficient occasion for any understanding of that sort.

I would comment further on the language employed by Sir Stafford in connection with his statement, and on what that language, as reported, seemed to imply; but a letter of his afterward addressed to Lord Derby, which it seems you could not have seen when you wrote to me, has been read in Parliament and published, giving quite a different view of the matter. It is not left now to be suspected that the British Commissioners were misled or deceived by some private communication made to them. In the letter to Lord Derby, a copy of which I send you herewith, Sir Stafford explains that the ground of his "understanding" was the statement made by the American Commissioners at the opening of the conference on the 8th of March, and which is set forth in the Protocol; but that he did not rely even upon that, or on anything outside of the Treaty itself, to support his conclusion.

How this opinion, founded on the terms of the Treaty and the words of the Proctocol, which are open for interpretation to all the world, should "bring the British Commissioners into painful relations with their American colleagues," and cause "painful questions to arise between them," I do not comprehend. It is enough to know that the proof of the "promise" is claimed now to be derived inferentially from the language of the Treaty and Proctocol; and I am sure that differences of opinion as to the meaning to be assigned to those documents ought to be and can be discussed without any need or danger of making the controversy a "personal question."

I am, my dear sir, very sincerely and truly yours,

ROBT. C. SCHENCK.

No. 8.

Letter of Judge Williams in answer to Mr. Fish's letter of June 3.

DEPARTMENT OF JUSTICE,
Washington, June 24, 1872.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, inclosing an extract from an address by Sir Stafford Northcote in the Exeter Chamber of Commerce, in which he says, referring to the claim for consequential damages under the treaty of Washington: "We (the British Commissioners) understood a promise to be given that these claims were not to be put forward by the United States."

I have no means of knowing what the British Commissioners understood upon that subject, for an understanding may be founded upon an inference or an argument; but if Sir Stafford Northcote means to say that any promise as to said claims, not found in the Treaty or Proctocol accompanying it, was given by the American Commissioners, I am prepared respectfully to controvert the assertion. I was never a party to any such promise, nor did I ever hear of anything of the kind, and the probabilities that it was made are not very strong, for the British Commissioners must have known that any promise modifying the Treaty would have no validity if not submitted to and approved by the Senate of the United States, which, of course, could not be the case with any such promise, of the existence of which there is no written evidence. I presume, if Sir Stafford Northcote used the language imputed to him, that he was betrayed into an inaccuracy of expression, and that he only intended to say the British Commissioners understood that the claim for consequential damages was not to be put forward, and not that any promise to that effect, outside of his construction of the Treaty and Protocol, was given by the American Commissioners.

Yours, very truly,

GEO. H. WILLIAMS.

HON. HAMILTON FISH,
Secretary of State.

No. 9.

Extract from the 36th Protocol of the Conferences of the Joint High Commission.

At the conference held on the 8th of March the American Commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent rebellion in the United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; that the history of the Alabama, and other cruisers, which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain, or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels, with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion, and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruisers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers; that in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account in the event of no such settlement being made.

The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States in satisfaction of all the claims and the interest thereon.

The British Commissioners replied that Her Majesty's Government could not admit that Great Britain had failed to discharge toward the United States the duties imposed on her by the rules of international law, or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being designed to cruise against the United States, including two iron-clads, had been arrested or detained by the British Government, and that that Government had in some instances not confined itself to the discharge of international obligations, however widely construed, as, for instance, when it acquired, at a great cost to the country, the control of the Anglo-Chinese flotilla, which, it was apprehended, might be used against the United States.

They added that although Great Britain had, from the beginning, disavowed any responsibility for the acts of the Alabama and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, provided that a fitting Arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon.

The British Commissioners replied that they had no authority to agree to a submission of these claims to an Arbitrator with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the Arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

The American Commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles that should be agreed upon should be held to be applicable to the facts in respect to the Alabama claims.

The British Commissioners replied that they could not admit that there had been any violation of existing principles of international law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the Arbitrator; but that they would make known to their Government the views of the American Commissioners on the subject.

At the respective conferences on March 9, March 10, March 13, and March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrators, and laid down for observance by two Governments in future.

At the close of the conference of the 14th of March the British Commissioners reserved several questions for the consideration of their Government.

NOTE.—This Proctocol contains the only statement with respect to the "indirect losses" made by the American Commissioners. (See also No. X, extract of Marquis of Ripon's speech.) It was officially published, both in Great Britain and in the United States, nearly a year before the meeting of the Exeter Chamber of Commerce, of May 17, 1872, having been laid before both Houses of Parliament about the 3d June, 1871, and printed in British Parliamentary Papers, North America, No. 3, 1871, which was received at the Department of State June 20, 1871.

No. 10.

Extract from a speech of the Marquis of Ripon, in the House of Lords, June 4, 1872; *taken from the London Times of June* 5, 1872.

MY LORDS: There seems to have got abroad an opinion that Her Majesty's Commissioners at Washington, last year, relied on what has been described as a secret understanding subsisting between them and the American Commissioners, that these indirect claims would not be brought forward. I should entirely agree with an opinion which I believe was expressed a day or two ago by a noble and learned lord, who generally sits behind me, (Lord Westbury,) that if Her Majesty's Commissioners had been induced, by any such understanding, to employ language which, in their judgment, admitted these claims, they would be liable to just and severe blame. But I distinctly deny, on the part of those who were engaged in these negotiations, that that was the case. We may have failed or we may have succeeded in employing language which excludes these claims. I will not detain your lordships now by entering into any elaborate argument on that subject, so fully stated in the correspondence on the table; but, whether we failed or whether we succeeded, we were not induced to employ language which we considered would admit those claims by any consideration of that kind, and which, in this correspondence, is described as a waiver. On the 8th of March, as referred to in the Proctocol, these claims were mentioned by the United States Commissioners—mentioned *in a manner which, in substance, is described in that Proctocol on your lordships' table; and throughout the course of the subsequent negotiations these claims were not again brought forward.*

No. 11.

Letter of Sir Stafford Northcote to Earl Derby, June 5, 1872, *read in the House of Lords June* 6; *taken from the report of proceedings in the House of Lords in the London Times of June* 7.

THE TREATY OF WASHINGTON.

THE EARL OF DERBY: My Lords, before the order of the day is called on, I may be allowed to trespass on your lordships' attention for one moment. I have received, since the debate of the night before last, a letter from my Right Honorable friend Sir Stafford Northcote, one of the Commissioners who negotiated the Treaty of Washington, which, as it involves a matter of personal explanation respecting a statement which had been made by him, and referred to in this House, I have been requested to read to your lordships. It is as follows:

86 HARLEY STREET, W., *June* 5, 1872.

DEAR LORD DERBY: I observe that, in your speech in the House of Lords last night, you referred to a recent statement of mine with regard to the negotiations at Washington in a manner which shows me that you, as well as many other persons, have misunderstood my meaning.

It has been supposed, and you seem to have supposed, that I said that an understanding existed between the British and the American negotiators that the claims for indirect losses should not be brought forward; and it has been inferred from this that we, relying upon that understanding, were less careful in framing the Treaty than we should otherwise have been.

This is incorrect. What I said was, that we had represented to our Government that we understood a promise to have been given that no claims for indirect losses should be brought forward. *In so saying, I referred to the statement voluntarily and formally made by the American Commissioners at the opening of the conference of the 8th of March*, which I, for one, understood to amount to an engagement that the claims in question should not be put forward in the event of a treaty being agreed on.

I will not enter into a discussion of the grounds upon which I came to that conclusion; but *will simply say that we never for a moment thought of relying upon it, or upon any other matter outside of the Treaty itself.* We thought, as I still think, that the language of the Treaty was sufficient, according to the ordinary rules of interpretation, to exclude the claims for indirect losses. At all events, we certainly meant to make it so.

I remain, yours, very faithfully,

STAFFORD H. NORTHCOTE.

The EARL OF DERBY.

Perhaps you will kindly read this in the House of Lords to-morrow.

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